(3)

Supreme Court, U.S.
FILED
APR 29 1986
JOSEPH F. SPANIOL, JR.
CLERK

85-1856

No.

IN THE

Supreme Court of the United States

OCTOBER TERM, 1985

JAYCO SYSTEMS, INC.,

Petitioners,

v.

SAVIN BUSINESS MACHINES CORPORATION

Respondent.

APPENDIX II TO THE PETITION FOR WRIT OF CERTIORARI EXHIBITS J — O

136pp

INDEX OF EXHIBITS

APPENDIX I

EXHIBIT A: Order Denying Petition For Rehearing And Suggestion For Rehearing En Banc

EXHIBIT B: Opinion, Jayco Systems v. Savin Business Machines Corp., 777 F.2d 306 (5th Cir. 1985)

EXHIBIT C: District Court Final Judgment

EXHIBIT D: Oral Deposition Of Trent Fowler

EXHIBIT E: Oral Deposition of Calvin Holman

EXHIBIT F: Deposition of Jim Woznick

EXHIBIT G: Affidavit of Jim Woznick

EXHIBIT H: Oral Deposition of Jim Woznick

EXHIBIT I: Affidavit of James Woznick

APPENDIX II

EXHIBIT J: Affidavit of Jerry M. Andreff

EXHIBIT K: Affidavit of Robert Mayes

EXHIBIT L: Affidavit of Larry Stutes

EXHIBIT M: Affidavit of Mary L. Wilson

EXHIBIT N: Deposition of Neil Henriksen

EXHIBIT O: Affidavit of Pat Loconto

APPENDIX III

EXHIBIT P: Deposition of Savin Business Machines Corporation, by Max Schultes

EXHIBIT Q: Affidavit of Collene Collins

EXHIBIT R: Woznick Letter of July 8, 1976

EXHIBIT S: Oral Argument On Summary Judgment Before The Honorable Barefoot Sanders

EXHIBIT T: Oral Deposition of Jack Bishop

EXHIBIT U: Affidavit of Jerry Andreff

EXHIBIT V: Oral Deposition of Shelby D. Hunt

EXHIBIT W: Memorandum In Support Of Plaintiffs' Motion for Summary Judgment

EXHIBIT X: Brief of Appellant

EXHIBIT Y: Oral Deposition of James P. Lawson

EXHIBIT J

IN THE UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF TEXAS

DALLAS DIVISION

JAYCO SYSTEMS, INC., JIM WOZNICK and SHIRLEY WOZNICK Plaintiffs, V. SAVIN BUSINESS MACHINES CORPROATION, Defendant, V. AMERICAN BUSINESS PRODUCTS, INC., Third-Party Defendant	§ § § § § § § § § § § § § § § § §	CIVIL ACTION NO. 3-78-0060-H

AFFIDAVIT OF JERRY M. ANDREFF

STATE OF TEXAS §
§
COUNTY OF DALLAS §

BEFORE ME, the undersigned authority, on this day personally appeared JERRY M.

ANDREFF, known to me and who being by me duly sworn on oath sated:

"My name is Jerry M. Andreff, and I am the son-in-law of Mr. and Mrs. James Woznick, who are the owners of Jayco Systems, Inc.

"In the fall of 1974 I personally participated in the negotiations which lead to the initiation of operations as the Savin bond copier authorized dealer in Dallas, Tarrant, Collin and Ellis Counties area. At that time I was serving as a vice president of Jayco Systems, Inc.

"In early 1976 Jayco was first advised that the Savin Branch would be again opening up its operations for the sale of the new bond copier, only. Jayco was also notified that other independent dealers would

be appointed in the Territory. These actions were taken contrary to Savin's agreement to assist Jayco, not compete with Jayco, for three years, and Savin's promise not to appoint any additional bond copier dealers in the Dallas, Tarrant, Collin and Ellis Counties Territory.

"From the initiation of operation in November of 1974, Jayco Systems, Inc. intended and participated in State of Texas copier rentals and sales. One of the major objectives of Jayco was to obtain substantial State of Texas business, as well as that of the surrounding states, upon which a secure foundation could be laid for the development of a substantial dealership. I, personally, had extensive experience in dealing with governmental entities, and particularly the

State of Texas.

"In 1975, on behalf of Jayco Systems, Inc., I bid for the sale of 60 Cannon copiers to the State of Texas. Because the bid required an '11 x 17' capability which the Savin machines did not have, I bid the Cannon machines. That bid was successful, and was a profitable venture for Jayco Systems, Inc.

"In 1975 I also advised Mr. Art Nendick, a vice president of the Savin Corporation, that Jayco would be submitted a bid for supplying the Savin 750 series bond copiers to the State of Texas on many of its contractual categories. Mr. Nendick initially indicated some interest in assisting Jayco, requested that I introduce him to the purchasing agents and other decision-making

people for the State of Texas, and indicated no particular problem with Jayco obtaining its objective.

"Shortly thereafter, on discussing further Jayco's plan for developing the State of Texas bond copier rental contract, Mr. Nendick advised me that Savin would not either sell or supply any Savin 750 bond copiers to satisfy any State of Texas rental contract. On asking why Savin had taken such a position, Mr. Nendick replied that there were not sufficient machines available to support such a bid, although he would advise Jayco when and if Savin could support a Jayco bid on the State of Texas bond copier rental contract. Just prior to leaving Jayco Systems, Inc. in early 1976, I again questioned Mr. Nendick on the feasibility of

a State of Texas bid on the bond copier rentals of the upcoming 1976-1977 bid year. Mr. Nendick replied that Savin would not provide any machines for such a bid by Jayco, and refused to discuss the matter any further. Mr. Nendick left me with the distinct impression that Savin would not supply machines under a rental contract between Jayco and the State of Texas, and that no bid on Savin bond copiers would be made for the year 1976-1977.

"Had Savin not refused to deal with Jayco in connection with the State of Texas bond copier rental contracts, Jayco would have made such a bid, and was ready, willing and able, both administratively and financially, to handle such a project. With my background in major account marketing and

governmental bids, in general, I feel certain that I would have underbid the Savin Corporation in order to obtain the State of Texas bond copier rental contracts. Bidding under the price actually bid by the Savin Corporation would have allowed Jayco to recover its investment in 18 to 24 months.

"The only reason for Jayco not obtaining the State of Texas bid in July of 1976 is the absolute refusal of the Savin Corporation to deal with Jayco.

"After leaving Jayco in 1976 and forming my own business, Copy Systems, Inc., I continued to nurture business with the State of Texas. Due to unfavorable circumstances, Copy Systems, Inc. was forced to file a petition in Bankruptcy.

"Because of the Bankruptcy of Copy

Systems, Inc., I was employed by the Savin Corporation to assist, hire and train personnel in the handling of major account marketing with the Dallas Savin Branch. I was employed on or about November of 1977 and worked with the Savin Corporation until approximately September of 1981, almost four years later.

"During my employment with Savin from 1977-81, I was intimately familiar with the operation of the branch under the management of both Mr. Art Felcoff, the former Branch General Manager, and Mr. Tony Pinto, the current Branch General Manager.

"I have reviewed the deposition of Mr. Art Felcoff which has been taken in this case. From my review of the deposition, I know of my own personal knowledge that Mr.

EXHIBIT J

Felcoff is correct in stating the following:

(a) that Mr. Felcoff destroyed documents which he feared reflected antitrust violations. I personally viewed the paper shreader which was utilized in his office. I also viewed the shreaded paper on the floor of the office;

(b) that Mr. Felcoff did advise all sales people to do whatever they had to do to beat a dealer, no matter what the cost. Mr. Felcoff advised his sales force that the only limitation on competition with the independent Savn dealers was loosing -- we were not to lose

a dale to a dealer. Otherwise, 'anything goes.'

(c) that Felcoff did admit having exchanged pricing information with independent Savin dealers in the Dallas-Fort Worth area. Meetings were held to attempt to lessen the price competition which was resulting from so many sellers of Savin products in one Territory. The competition was extremely keen because there existed no other meaningful competition in the low-price range for Savin 700 series copiers until late 1979 or 1980. In 1977, 1978 and most of 1979 the only com-

petition for the Savin Branch was other Savin dealers in the area.

(d) that Felcoff received numerous complaints from sales personnel that Jayco Systems, Inc. was a price-cutter, resulting in prices so low that Branch commissions were unsatisfactory. At numerous morning sales meetings, significant complaints were lodged about the price competition from Jayco. Of course, from time to time, there were complaints about pricing from other dealers as well.

(e) prior to the termination of

Jayco Systems, Inc., by Savin, I was aware of numerous rumors passing through the personnel at the Branch to the effect that Jayco was being terminated because it would not 'play along with the boys in New York,' because of financial hardship, inability to service machines, skating hot machines, and existing legal disputes with Savin over the Savin 300 series copiers. I also know that various sales people admitted utilizing desparaging remarks about Jayco as a matter of course in their sales presentation when competing with

Jayco.

"Both Art Nendick and Harry Farnham on numerous occasions before and after execution of the contract confirmed to Jayco that Savin was getting out the bond copier business in the Dallas Territory, and that Savin would support Jayco in whatever manner was reasonable. In the spring of 1976 I learned that the Savin Corporation was going to reestablish a Branch operation and that Savin was appointing additional bond copier dealers in violation with their contracts with us. Mr. Woznick and I were advised by Mr. Nendick and Mr. Marcou that the decision had been made by Savin management and that the new dealers and Branch would simply be a fact of life with which Jayco would have to deal, despite Mr. Nendick's promises and the writ-

ten agreements to the contrary.

"Had Mr. Nendick, my long-time friend and former associate at Saxon business Products, revealed to me in the fall of 1974 the actual capacity and capability of the poor Savin 300 copier, the fact that despite the oral agreements and written agreements that Savin would return to the Territory within three years if it so desired, that Jayco would be restricted from developing a strong State of Texas business, and other matters which were extremely important to the decision to purchase the Dallas Branch operations, I would never have recommended to my in-laws that they purchase the Dallas operations. The sum of the parts reveals that Savin dumped its poor 300 series copiers off on Jayco, and reaped the benefits on the 700

series copiers at the expense of any dealer, particularly Jayco, who got in the way.

"Further, Affiant sayeth not."

/s/ Jerry M. Andreff
JERRY M. ANDREFF

SUBSCRIBED AND SWORN TO this 7th day of January, 1982.

/s/ Virginia D. Willis
Notary Public in and for
The State of Texas

My Commission Expires: 2-2-85

CERTIFICATE OF SERVICE

This is to certify that a true and correct copy of the above and foregoing Affidavit of Jerry M. Andreff has been forwarded to counsel for Defendant, this 7th day of January, 1982.

/s/ Samuel L. Boyd
SAMUEL L. BOYD

EXHIBIT K

IN THE UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF TEXAS

DALLAS DIVISION

JAYCO SYSTEMS, INC., JIM WOZNICK and SHIRLEY WOZNICK Plaintiffs,	§	
V.	§	CIVIL ACTION NO. 3-78-0060-H
SAVIN BUSINESS MACHINES CORPROATION, Defendant,	§	
V.	§	
AMERICAN BUSINESS PRODUCTS, INC., Third-Party Defendant	§	

AFFIDAVIT OF ROBERT MAYES

THE STATE OF TEXAS §
§
COUNTY OF EL PASO §

BEFORE ME, the undersigned authority, on this day personally appeared

EXHIBIT K

ROBERT MAYES, who, after being first duly sworn, stated under oath that the following statements are within his own personal knowledge and are true and correct:

1. My name is Robert Mayes. I am over the age of 18 years, of sound mind and capable of making this Affidavit.

2. "I am presently a photocopier dealer for the Ricoh brand. Ricoh was the manufacturer of the extremely successful Savin liquid toner bond copiers. It now sells copiers in competition with Savin.

3. "I was formerly a Savin dealer in Austin, Texas. There, I was a part owner of Modern Methods which acquired a Savin dealership in 1975. That dealership was later sold in late 1976 to Mr. Lou Scantland, who at that time owned Uni-Copy, another

Savin dealership, in Houston, Texas.

4. "Subsequent to my departure from Modern Methods, I again associated with Savin when I was at Columbia Business Systems, a Savin dealership in Corpus Christi, Texas. At Columbia, I first served as Sales Manager and ultimately served as its President.

5. "While I was associated with Modern Methods, the Austin Savin dealership, in 1975, I intended to bid the Savin 300 Series bond copiers for the annual State of Texas rental contract for the 'Austin Zone'. However, I did not do so at the request of Savin corporate employees who were afraid that the Savin 300 copiers would 'sour the State on Savin.' I was aware that Jerry Andreff of Jayco Systems, Inc. in 1975 submitted a copier bid for the State of Texas

annual rental contracts. As I recall, he bid the Savin 300 Series copiers. His bid utilizing the Savin 300 Series was, apparently, not accepted.

6. "In 1975, I first learned about the Savin 700 Series plain paper bond copiers. The Savin 700 Series were bond copiers vastly superior to anything that Savin had previously produced and to any copiers then on the market that they might have been considered as competitors. My company, Modern Methods was interested in bidding the Savin 700 Series copiers to the State of Texas. The copier appeared to be outstanding insofar as its reliability and dependability in the price range in which it was offered; because of these characteristics there appeared to be a very good chance of

obtaining State of Texas copier business with these machines. Because of supply and allocation problems, we could not submit bids to the State of Texas until Savin confirmed that the machines would be made available if we were successful. After confirmation of allocation from Mr. Art Nendick, a Vice President of Savin, we successfully bid for two open-market purchases in 1975. One contract involved the sale of a single machine, and the other involved a sale of approximately 25 Savin machines. Subsequent to those two successful sales, Savin entertained more serious discussions with Modern Methods in connection with the possibility of substantially increased State business. We had requested that they commit to providing the necessary machine allocations in order that we could

bid for the State of Texas business for our zone, in and about Austin. Initially we were assured by Mr. Nendick that there would be no problem in this regard. We proceeded to have talks with various State officials, including Trent Fowler and later Robert Schneider, concerning bids for the State's bond copier business. I took the opportunity, at the request of Mr. Nendick, to introduce him to the various State officials in order that the State might feel assured of Modern Methods' capability to perform under a State copier contract.

7. "In initial meetings with Mr. Nendick, he reassured me that Savin was interested in looking into the State business from the standpoint of providing inventory from which we could successfully fulfill a

bid if we received one from the State. At no time in the initial stages did Mr. Nendick ever indicate that Savin was interested in reserving the bid for itself, or in excluding the dealers from bidding.

8. "As the 1976 bid opening for bond copier rentals approached, Mr. Nendick made several visits to Austin where he met privately with Mr. Fowler. Mr. Fowler was the State official whom we had to sell in order to get the contracts, and the individual who made the ultimate recommendation for the bids awarded.

9. "The night before the 1976 annual rental contract bid opening, myself, my partner, Mr. Neil Henriksen, Savin's Regional Manager, Mr. Nendick and Mr. Fowler dined and drank beer at an outdoor restaurant

known as Convict Hill in Austin. It was sort of a pre-bid opening celebration. Mr. Fowler seemed very happy and confident for us. Even as late as the night before the bids were to be opened, I still felt that Modern Methods would be bidding the Savin machines for the Austin zone which we served. I was unsure how the remainder of the zones would be handled, but I did not expect that we would be able to bid that business.

10. "I was informed by Art Nendick the next morning, prior to the bid opening, that only Savin would be submitting the bids for the machines, rather than Modern Methods or any other dealers. I was told that in return for my cooperation and help, that Modern Methods would be granted (1) a service fee for each machine that would be installed

under the State contract, and (2) the right to bid the toner and dispersant on the supply bid. I was not given a choice on the matter, despite the fact that I had made known to Mr. Nendick for a substantial amount of time that Modern Methods intended to bid the machine contracts itself and that I had been advised that Savin had agreed to supply us with the machines needed for this bid. As a Savin dealer, however, I realized that the machine allocation controls possessed by Savin controlled the ultimate welfare of my business. Modern Methods had no alternative but to go along with whatever Savin wanted. I had no doubt that if we had competed with Savin we would have been cut off from an allocation of 700 Series copiers, whether for the State of Texas contract or for our other

markets. I knew from Mr. Nendick that bidding against Savin could have resulted in the termination of our Savin dealership. To fail to have cooperated with Savin would have been a financial disaster. On behalf of Modern Methods, I reluctantly agreed to go along with Mr. Nendick's arrangement for the State copier business.

11. "Savin had no capability to service the State of Texas copier business without our cooperation, particularly as well as the cooperation of other Savin dealers. For instance, at the time of the bid opening in June of 1976, Savin had no service capability within the State of Texas, had no sales representatives capable of marketing the machines to the State agencies within the State of Texas, and virtually had no cor-

porate presence. Without the cooperation of the independent Savin dealers, Savin could not have successfully bid and fulfilled the bond copier contracts. Yet we needed nothing from Savin but machines allocations to service the State copier business.

12. "Several weeks later, I learned that Savin had also placed a bid for the toner and dispersant business at G.S.A. pricing. That pricing of $45.00 was too high. I learned from Mr. Marcoux and Mr. Nendick that Savin's bid for toner and dispersant caused the State's 'cost per copy formula' to reflect that Savin was not the low bid on the State contract. The State calculated cost per copy on the basis of the rental prices and the cost of supplies (i.e., toner and dispersant) used to make those

copies in order to determine the low, winning bidder. Although specific numbers were not mentioned, I was informed by Mr. Rod Marcoux of Savin that a lower toner and dispersant bid would have to be submitted in order for Savin to get the copier rental contract it had bid. I was not certain of the exact price at that time, but I knew that additional bids would have to be submitted, or Savin would not receive the contract award. In fact, based upon the bids submitted, Mr. Marcoux stated that Saxon was actually the low bid on the contract.

13. "Subsequent to Mr. Marcoux's conversations with me, Savin set up a dealer meeting in Austin, Texas, in August of 1976. The apparent purpose of that meeting was for Savin and Mr. Fowler to explain to the

dealers the manner in which the State of Texas business would be administered, as well as to secretly coordinate a toner and dispersant bid plan by which some of the dealers which would rebid Savin supplies in order to make the Savin contract the 'low bid' under the State's 'cost per copy' formula.

14. "In connection with these supplemental dealer bids on toner and dispersant, I contacted Mr. Fowler, who was at that time serving with the State Auditor's Office, and he informed me what the cost per copy had to be in order for Savin to be the low bidder and to be awarded the copier contract. I relayed this information to Savin, and the price at which toner and dispersant was to be jointly bid by the participating dealers was determined for us by Savin. I do not know

why Savin decided not to resubmit a bid.

15. "Although Modern Methods had originally been promised all the toner and dispersant business, Mr. Nendick later advised me that he was concerned about the reaction that other Savin dealers might have if Modern Methods received most of the benefits which were given to the dealers under the arrangement, and he requested that Modern Methods share the toner and dispersant bid with a few other dealers. There was, however, a pricing problem in connection with the supplemental bids, because the price at which the dealers were told to bid would not allow a reasonable profit margin if Savin sold those supplies to us at its normal wholesale price. To dispense with this problem, Savin sold toner and dispersant to the three

cooperating dealers, who were to bid the supplies, at a price far below the lowest price available to other dealers. Modern Methods and the other two bidders were able to purchase toner and dispersant at those prices for other uses as well. As I recall it, the price was approximately $9.00 per TD Pak less than the lowest dealer cost. This gave us a nice price advantage over all other Savin dealers in our day-to-day business, as well as in connection with the State business.

16. "Once we were told the price to bid, and decided upon the division of the State territorial zones, I drove myself, Lou Scantland and Jim Quisenberry over to State Purchasing's business office. We went to that office for the purpose of obtaining bid

forms, and we sat down together and wrote out the bids by hand for submission and opening that morning. All three dealers, with the approval of Savin, agreed on territories we would serve, and the prices at which we would bid the toner and dispersant. Other Savin dealers were not allowed to bid, nor were they invited to do so. Without the willing assistance of the bidding Savin dealers, Savin would not have been able to obtain the copier rental contract that year, because its original bid was not the 'low bid'. According to Messrs. Fowler, Marcoux and Nendick, that without our bids being submitted in cooperation with Savin, Saxon would have received the contract. The bids are attached hereto as Exhibit "A."

17. "At the dealer meeting in August

of 1976, Mr. Nendick and Mr. Marcoux related to the assembled Texas dealers that all Savin equipment bids to the State of Texas were to be placed through the Austin Savin dealer. It was made extremely clear that no competitive bidding would be tolerated, and that anyone who tried to 'rock the boat' would find himself unable to obtain machines or supplies for other copier business. This policy was continuously related and enforced by Mr. Stutes, Mr. Henriksen, Mr. Marcoux and Mr. Nendick. Simply put, although other dealers could have effectively competed with Savin or the Austin Savin dealer, none of them did, because of the coersion exerted by Savin upon us all.

18. "The manifested threat of termination was sufficient to keep the indepen-

dent Savin dealers "in line" in connection with the State business.

19. "By 1977, I had left Modern Methods and associated with Columbia Business Systems in Corpus Christi, Texas. This Savin dealership could not purchase Savin supplies at the special low prices that Savin gave to the three dealers bidding the State of Texas supply contracts, and thus, I could not make a competitive bid to sell the State of Texas the Savin toner and dispersant it needed. Thus, at Columbia Business Systems, I began nurturing a relationship with Nashua, a manufacturer of competitive toner and dispersant for Savin copiers, in order to submit a bid to sell Nashua's toner and dispersant to the State of Texas for Savin copiers. I was personally informed by Savin corporate represen-

tatives, including Mr. Henriksen, that if I made a bid for toner and dispersant in competition with Savin or its dealers, that I would be terminated as a Savin dealer. Because of this threat, I did not bid the Nashua toner and dispersant which I knew would be compatible with Savin copiers at a price that would have been competitive with the prices bid by the cooperating Savin dealers. On the other hand, I would have been happy to bid Savin toner and dispersant had I been granted the same price advantage which was being enjoyed by Mr. Scantland and Mr. Quisenberry. No one could compete with them because of the price level at which they could acquire toner and dispersant from Savin.

20. "Because of the unique qualities

of the Savin plain paper bond copiers in 1977, I was unable to obtain other lines of machines which would be, in fact, competitive with the Savin copiers. There was simply no machine in the price range of $6,000.00 that was as dependable as the Savin 700 Series copiers. Although other manufacturers were producing machines with of the same general characteristics, none were actually competitive with the Savin machine. In fact, the only competition I encountered as a Savin dealer was from other Savin dealers or the Savin Corporation. It was not until approximately 1979 that competitive machines even began to provide any meaningful challenge to the Savin products in the general marketplace. The Savin group retained control of the State of Texas copier market,

however.

21. "During my time as a Savin dealer, I was also expressly forbidden to buy toner and dispersant for my Savin machines from manufacturers other than Savin. Savin Corporation representatives, including Mr. Stutes and Mr. Henriksen, constantly scrutinized us to determine whether or not we were substituting toner and dispersant of other manufacturers for Savin toner and dispersant. I was aware of lower priced toner and dispersant in the market which were compatible with the Savin 700 Series copiers. I would have enjoyed the higher profits and probably been able to provide lower prices to my customers by the use of these substitute toners and dispersants. However, because of the threat of termination as a Savin dealer, I did not

take advantage of these other products.

22. "The Savin Corporation was not shy about informing us that the use of toners and dispersants from other manufacturers would result in termination. I personally recall being so warned by Mr. Robert Low, then the President of Savin, in California at a Dealers' Council meeting. He was extremely candid in advising us that the purchase of competing toners and dispersants would result in termination. This was approximately 1977. This policy had earlier been expressed by Savin's corporate representatives in the State of Texas, but I had not previously heard it from the mouth lips of the President of the Savin Corporation.

23. "I also knew at the time that Savin submitted the 1976 bid for the bond

copier rental contracts that Jayco Systems, Inc., principally through Mr. Jerry Andreff, had been developing a relationship with the State in order that they could bid the Savin machines on some basis. I was not aware of the specific territory that Jayco intended to bid, nor was I aware of the pricing that they were considering. I did, however, know that Jerry Andreff, the Vice President of Jayco, had extensive experience in the State of Texas copier business. I knew that he had managed the State of Texas contract for Saxon prior to joining Jayco in Dallas. I never personally knew why Jayco did not submit a bid. The only reason Modern Methods did not submit a bid was because we were told by Mr. Nendick that Savin, rather than the dealers, he would submit the bid for machines. I have

subsequently learned that Jayco also complained of the same refusal of Mr. Nendick to allocate any machines for any State contract which Jayco might have received.

24. "Simply stated, Savin precluded competition for the State of Texas copier business by virtue of its total control over the allocations of Savin machines. Serious allocation problems existed until at least late 1978. Savin and its dealers controlled the rental bids, as well as the open-market purchases of machines and supplies very easily during that timeframe. Savin representatives also made it plain that no actual price or other competition with the Savin or the Austin Savin dealer would be tolerated on any aspect of the State copier business. The Savin dealers were willing participants in

this arrangement, because of the large profits which they received for going along without 'rocking the boat.' The absence of price competition allowed all of us to split higher profits with each other. Price competition would probably have resulted in lower profits, or no profits, to us by virtue of: (1) the lower prices paid by the State, and (2) the absence of the "Savin cartel" which guaranteed revenues to those who agreed not to compete. It profited all of us to cooperate with Savin's policy of 'non-competition in the State copier business;' particularly, in view of the outstanding threats of termination.

25. "Finally, Savin officials made us aware of instances in which individuals attempted to bid against the Austin Savin

dealer. Mr. Henriksen told me that Mr. Bill Jones in El Paso had attempted to bid against Uni-Copy in Austin, and that he, Mr. Henriksen, had threatened him with termination. I was also aware of a dealer in the Texas panhandle who threatened Savin's pricing control, and was also rebuked by Mr. Henriksen.

26. "The State of Texas overpaid for its purchases of Savin equipment, once the machines became more plentiful. The State was paying $4,600.00 or more per Savin copier at a time when the same machines were able to the general retail public for $4,000.00 or less per machine. The Savin price-fixing arrangement was profitable, for the Savin cartel and costly for the State of Texas.

27. "Once I was with Columbia, I

would have competed with Savin, and its Austin dealer, had I not been worried about having my dealership in Corpus Christi terminated. Savin's special relationship with Mr. Fowler and its unique product provided the market power which allowed it to totally dominate the State of Texas copier market, particularly for contracts under 75,000 copies per month. Savin controlled machine allocation, pricing, competition and dealer conduct. While it was very beneficial for those who participated, the citizens of the State of Texas did not benefit from the Savin coalition."

Further, affiant sayeth not.

/s/ Robert Mayes
ROBERT MAYES

SUBSCRIBED AND SWORN TO BEFORE ME on

this the 21st day of February, 1984.

/s/ Doris Janice Lea
NOTARY PUBLIC in and for
the State of Texas

My commission expires:

11/9/85

EXHIBIT K

BID INVITATION

S T A T E O F T E X A S

CLASS 015

COPYING, SUPPLIES, SAVIN 750

BIDS OPEN: 11:00 a.m., August 10, 1976

Estimated requirements for all State Agencies for the period beginning September 1, 1986 and ending April 30, 1977.

BID OF

Modern Methods, Inc.
NAME OF BIDDER

5555 N. Lamar, Suite E-111
STREET OR BOX NO.

Austin, Texas 78751
CITY OR TOWN

/s/ Robert Mayes 8-10-76
SIGNED BY

SUBMIT BID PROPOSAL TO

STATE BOARD OF CONTROL
P.O. Box 13047 CAPITOL STATION
Austin, Texas 78711

EXHIBIT K

Bids Mailed: July 27, 1976

EXHIBIT K

STATE BOARD OF CONTROL
Austin, Texas

PROPOSAL

State Board of Control
Austin, Texas

Gentlemen,

I - We - propose to furnish and deliver any and all of the supplies named in this schedule, opposite which prices have been set. The price or prices offered herein shall apply for the period of time stated in this schedule.

I - We - further agree to strictly abide by all the terms contained in "General Instructions, Terms and Conditions to Bidders" which are made a part hereof, in addition to the terms, conditions and specifications embodied in this pamphlet.

EXHIBIT K

It is understood and agreed that these bids shall constitute an offer, which when accepted in writing by the State Board of Control, and subject to the terms and conditions of such acceptance, will constitute a valid and binding contract between the undersigned and the State of Texas.

It is further understood and agreed that the State reserves the right to extend the contract period covered by any contract award, resulting from these bid proposals, a maximum of ninety (90) days beyond the normal expiration date of such contract.

By my - our - written signature on the PROPOSAL, we guarantee and certify that all items included in this bid meet or exceed any and all State Specifications covering such

items. I - We - further agree, if awarded a contract, to deliver on each order merchandise which meets or exceeds the specifications.

By the signature hereon affixed, the bidder hereby certifies that neither the bidder nor the firm, corporation, partnership, or institution represented by the bidder, or anyone acting for such firm, corporation, or institution has violated the antitrust laws of this State, codified in Section 15.01, et. seq., Texas Business and Commerce Code, or the Federal antitrust laws, nor communicated directly or indirectly the bid made to any competitor or any other person engaged in such line of business.

MAIL ORDER TO:
(If different from address shown on Person, Firm, or Corp.) Modern Methods, Inc.

EXHIBIT K

face of bid)

Modern Methods, Inc Firm	5555 N. Lamar P.O. Box or Street No.
5555 N. Lamar, E-111 P.O. Box or Street No.	Austin, Texas 78751 City, State, Zip Code
Austin, Texas 78751 City, State Zip	/s/ Robert Mayes Signed By Title: Vice President Date: 8-10-76

IMPORTANT: This proposal must be manually signed in ink. Entries of bid prices shall be made with ink or typewriter.

EXHIBIT K

SMALL ORDERS: Agencies will pay transportantion charges on all orders which have a NET total of less than $25.00.

Samples for testing may be required. Samples will be tested by one or more agencies selected by the Board of Control.

The State reserves the right to buy from another source if it is evident the contracted supplies will not serve the needs of any agency on a certain article or service. This shall not be construed as a failure of the contractor to perform his contract nor as a breach of contract by the Board of Control.

THIS IS A "NET OR FIRM PRICE" TYPE OF BID.

NOTE: Complete the "Type or Number" column

EXHIBIT K

only if your number is different from that shown in the description.

FOR ZONES 1 & 2 ONLY

015-80-06

DISPERSANT AND TONER, SAVIN 750 COPIER

BRAND OR MPG Savin CASH DISC 0 % 0 DAYS

8 QTS IDSPERSANT and two Bottles 600 cc Toner with 2 Toner Valves

per case 36.00 case

This Bid supercedes all other Modern Methods Bid for Class 015-80-06.

/s/ Robert Mayes

EXHIBIT K

BID INVITATION

S T A T E O F T E X A S

CLASS 015

COPYING, SUPPLIES, SAVIN 750

BIDS OPEN: 11:00 a.m., August 10, 1976

Estimated requirements for all State Agencies for the period beginning September 1, 1986 and ending April 30, 1977.

BID OF

Universal Copy Systems, Inc.
NAME OF BIDDER

2750 Northaven Suite 107
STREET OR BOX NO.

Dallas, Texas 75229
CITY OR TOWN

/s/ James Quisenberry Aug. 10, 1976
SIGNED BY

SUBMIT BID PROPOSAL TO

STATE BOARD OF CONTROL
P.O. Box 13047 CAPITOL STATION
Austin, Texas 78711

EXHIBIT K

Bids Mailed: July 27, 1976

EXHIBIT K

STATE BOARD OF CONTROL
Austin, Texas

PROPOSAL

State Board of Control
Austin, Texas

Gentlemen,

I - We - propose to furnish and deliver any and all of the supplies named in this schedule, opposite which prices have been set. The price or prices offered herein shall apply for the period of time stated in this schedule.

I - We - further agree to strictly abide by all the terms contained in "General Instructions, Terms and Conditions to Bidders" which are made a part hereof, in addition to the terms, conditions and specifications embodied in this pamphlet.

EXHIBIT K

It is understood and agreed that these bids shall constitute an offer, which when accepted in writing by the State Board of Control, and subject to the terms and conditions of such acceptance, will constitute a valid and binding contract between the undersigned and the State of Texas.

It is further understood and agreed that the State reserves the right to extend the contract period covered by any contract award, resulting from these bid proposals, a maximum of ninety (90) days beyond the normal expiration date of such contract.

By my - our - written signature on the PROPOSAL, we guarantee and certify that all items included in this bid meet or exceed any and all State Specifications covering such

items. I - We - further agree, if awarded a contract, to deliver on each order merchandise which meets or exceeds the specifications.

By the signature hereon affixed, the bidder hereby certifies that neither the bidder nor the firm, corporation, partnership, or institution represented by the bidder, or anyone acting for such firm, corporation, or institution has violated the antitrust laws of this State, codified in Section 15.01, et. seq., Texas Business and Commerce Code, or the Federal antitrust laws, nor communicated directly or indirectly the bid made to any competitor or any other person engaged in such line of business.

MAIL ORDER TO:
(If different from address shown on

Universal Copy Systems
Person, Firm, or Corp.

face of bid)

Universal Copy	2750 Northaven #107
Firm	P.O. Box or Street No.
	Dallas, Texas 75229
2750 Northaven #107	City, State, Zip Code
P.O. Box or Street No.	
	/s/ James Quisenberry
Dallas, Texas 75229	Signed By
City, State Zip	Title: President
	Date: 8-10-76

IMPORTANT: This proposal must be manually signed in ink. Entries of bid prices shall be made with ink or typewriter.

EXHIBIT K

SMALL ORDERS: Agencies will pay transportantion charges on all orders which have a NET total of less than $25.00.

Samples for testing may be required. Samples will be tested by one or more agencies selected by the Board of Control.

The State reserves the right to buy from another source if it is evident the contracted supplies will not serve the needs of any agency on a certain article or service. This shall not be construed as a failure of the contractor to perform his contract nor as a breach of contract by the Board of Control.

THIS IS A "NET OR FIRM PRICE" TYPE OF BID.

NOTE: Complete the "Type or Number" column

EXHIBIT K

only if your number is different from that shown in the description.

FOR ZONES 3 & 4 ONLY

015-80-06

DISPERSANT AND TONER, SAVIN 750 COPIER

BRAND OR MPG Savin CASH DISC 0 % 0 DAYS

8 QTS IDSPERSANT and two Bottles 600 cc Toner with 2 Toner Valves

per case 36.00 case

EXHIBIT K

BID INVITATION

S T A T E O F T E X A S

CLASS 015

COPYING, SUPPLIES, SAVIN 750

BIDS OPEN: 11:00 a.m., August 10, 1976

Estimated requirements for all State Agencies for the period beginning September 1, 1986 and ending April 30, 1977.

BID OF

UNI-COPY CORPORATION OF TEXAS
NAME OF BIDDER

5808 Parkersburg
STREET OR BOX NO.

Houston, Texas
CITY OR TOWN

/s/ Louis Scantland 8/10/76
SIGNED BY

SUBMIT BID PROPOSAL TO

STATE BOARD OF CONTROL
P.O. Box 13047 CAPITOL STATION
Austin, Texas 78711

EXHIBIT K

Bids Mailed: July 27, 1976

EXHIBIT K

STATE BOARD OF CONTROL
Austin, Texas

PROPOSAL

State Board of Control
Austin, Texas

Gentlemen,

I - We - propose to furnish and deliver any and all of the supplies named in this schedule, opposite which prices have been set. The price or prices offered herein shall apply for the period of time stated in this schedule.

I - We - further agree to strictly abide by all the terms contained in "General Instructions, Terms and Conditions to Bidders" which are made a part hereof, in addition to the terms, conditions and specifications embodied in this pamphlet.

EXHIBIT K

It is understood and agreed that these bids shall constitute an offer, which when accepted in writing by the State Board of Control, and subject to the terms and conditions of such acceptance, will constitute a valid and binding contract between the undersigned and the State of Texas.

It is further understood and agreed that the State reserves the right to extend the contract period covered by any contract award, resulting from these bid proposals, a maximum of ninety (90) days beyond the normal expiration date of such contract.

By my - our - written signature on the PROPOSAL, we guarantee and certify that all items included in this bid meet or exceed any and all State Specifications covering such

items. I - We - further agree, if awarded a contract, to deliver on each order merchandise which meets or exceeds the specifications.

By the signature hereon affixed, the bidder hereby certifies that neither the bidder nor the firm, corporation, partnership, or institution represented by the bidder, or anyone acting for such firm, corporation, or institution has violated the antitrust laws of this State, codified in Section 15.01, et. seq., Texas Business and Commerce Code, or the Federal antitrust laws, nor communicated directly or indirectly the bid made to any competitor or any other person engaged in such line of business.

MAIL ORDER TO:
(If different from address shown on

Uni-Copy Corp. of Texas
Person, Firm, or Corp.

EXHIBIT K

face of bid)

Uni-Copy Corp. Firm	5808 Parkersburg P.O. Box or Street No.
5808 Parkersburg P.O. Box or Street No.	Houston, Texas 77036 City, State, Zip Code
Houston, Texas 77031 City, State Zip	/s/ Louis Scantland Signed By Title: Vice President Date: 8-10-76

IMPORTANT: This proposal must be manually signed in ink. Entries of bid prices shall be made with ink or typewriter.

EXHIBIT K

SMALL ORDERS: Agencies will pay transportantion charges on all orders which have a NET total of less than $25.00.

Samples for testing may be required. Samples will be tested by one or more agencies selected by the Board of Control.

The State reserves the right to buy from another source if it is evident the contracted supplies will not serve the needs of any agency on a certain article or service. Tnis shall not be construed as a failure of the contractor to perform his contract nor as a breach of contract by the Board of Control.

THIS IS A "NET OR FIRM PRICE" TYPE OF BID.

NOTE: Complete the "Type or Number" column

EXHIBIT K

only if your number is different from that shown in the description.

FOR ZONES 5 ONLY

015-80-06

DISPERSANT AND TONER, SAVIN 750 COPIER

BRAND OR MPG Savin CASH DISC 0 % 0 DAYS

8 QTS IDSPERSANT and two Bottles 600 cc Toner with 2 Toner Valves

per case 36.00 case

EXHIBIT L

IN THE UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF TEXAS

DALLAS DIVISION

JAYCO SYSTEMS, INC., JIM WOZNICK and SHIRLEY WOZNICK,	§	
Plaintiffs,	§	
vs.	§	
SAVIN BUSINESS MACHINES CORPORATION,	§	NO. CA3-78-0060-H
Defendant,	§	
vs.	§	
AMERICAN BUSINESS PRODUCTS, INC.,	§	
Third-Party Defendant.	§	

AFFIDAVIT OF LARRY STUTES

THE STATE OF FLORIDA §
§
COUNTY OF Hillsborough §

BEFORE ME, the undersigned authority, on this day personally appeared LARRY STUTES,

who, after being first duly sworn, stated under oath as follows:

1. "My name is Larry Stutes. I am over the age of eighteen (18) years, of sound mind and capable of making this Affidavit. The following statements are made from my own personal knowledge and are true and correct.

2. "I am presently a photocopier dealer in Largo, Florida. I was previously employed by the Savin Corporation as Regional Manager, Area Manager, then Director of Field Operations, Dealer Divisin. As an Area Manager, I supervised the Savin dealership organization in several states including the State of Texas, and assisted the Savin effort in connection with the State of Texas photocopier business after the initial contract was awarded in 1976.

3. "As the Area Manager with responsibilities in connection with the State of Texas photocopier business, I was aware of the structure of the business and the manner in which it was administered. The characteristics of the State of Texas photocopier business which was obtained by Savin and its dealers for Savin equipment and supplies in 1976 included the following:

A. "The Savin Corporation submitted the State of Texas copier bids only after due discussion and evaluation with the Austin Savin dealer. After 1976, such communications were principally with Uni-Copy and Mr. Jim Lawson.

B. "Although Savin submitted the

formal bid through Mr. Jim Lawson at the jointly agreed upon pricing, Savin did not have nearly as much contact with the contract as the local Savin dealer. The contract was managed and administered by the participating independent Savin dealers throughout the State of Texas. The independent Savin dealers were not allowed to compete with or bid against the coordinated efforts of Savin and Uni-Copy. The Savin Corporation had a policy, in fact, of not allowing such competition, and that practice was made evident to all of the various Savin dealers in the State of Texas. Dealers were expressly advised that

they were not to 'cause any waves', and were to cooperate with Uni-Copy in order to facilitate the 'administration' of the contract. The Savin officers and participants in the State of Texas business did not want price competition between Savin dealers and Savin Corporation in the State of Texas for the State's photocopiers business. This was communicated to me by both Mr. Rod Marcoux and Mr. Art Nendick. Both of those gentlemen were officers with the Savin Corporation at the time. This result was obtained through coercion and profit-sharing arrangements of Savin, Uni-Copy and the other participating Savin dealers.

EXHIBIT L

C. "I personally recall a Dallas Savin dealer being rebuked by Mr. Rod Marcoux because of the dealer's desire to compete for some of the State of Texas copier business. Mr. Art Nendick also participated in the chidding of dealers who dared to suggest that they might, individually, wish to competitively bid for some of the State of Texas copier business. In the specific instance to which I have made reference, the Dallas Savin dealership was not allowed to seek business from State agencies. The Branch was 'given the business' for which the Dallas dealership had requested the right to compete.

D. "Clearly, there was no competition among the independent Savin dealers or the Savin Corporation in connection with the State of Texas business, although those businesses could have competed for that business. In fact, several of the dealers which cooperated in the agreement not to compete on the State of Texas copier business were fierce day-to-day competitors in their dealer territories, such as Dallas. In other words, Savin dealers who were in competition with each other and the Branch in Dallas were not allowed to compete in connection with the State of Texas business. This particular copier

business included both copiers and supplies.

4. "Savin dealers were additionally forbidden from purchasing supplies from sources other than Savin. Both myself and Mr. Neil Henriksen policed the dealers during our inspections by viewing inventory in order to determine whether there had been any attempt to buy toner, dispersant or paper supplies from sources, other than Savin. We both made the dealers aware of the fact that the purchasing of supplies from other manufacturers could result in termination of the dealerships, respectively. This was also openly communicated to dealers at Savin Dealer Council meetings. I specifically recall statements that termination would result should a dealer buy his supplies from

another manufacturer at dealer meetings by Messrs. Charlap (the Chairman of the Board), Low (the President), Carlin (the Executive Vice President), Nendick (Vice President), and Marcoux (Vice President).

5. "Mr. Paul Charlap further told the Savin management during our internal meetings that he did not like the fact that Savin had independent dealers. He also stated that it was his private desire and intention to rid the Savin distribution network of as many dealers as possible in high population areas.

6. "The Savin Corporation was informed by me of numerous problems being unfairly inflicted upon the dealers in my area, which included the State of Texas. Those problems included the following:

EXHIBIT L

A. Unfair distribution in Dallas, Texas of Savin 700 Series plain paper bond copiers; most of the machines being allocated to corporate Branches; with very few being made available to the independent Savin dealers. This resulted in sales being made by the Branch, because the dealers did not have the inventory to deliver to customers. This unfair practice continued until Messrs. Marcoux and Nendick advised me that the attorney for Savin said that the practice was illegal. Thereafter, the independent Savin dealers began receiving much more of the allocation.

B. "Savin corporate sales representatives were also representing to

customers in the Dallas marketplace that the independent Savin dealers were in poor financial condition, that they were going out of business, that Savin warranties were not provided for a copier purchased from an independent dealer, and other untruthful and disparaging remarks. These remarks from corporate sales representatives were reported to my superiors in the Savin Corporation. The Savin Corporation took no action to correct that conduct, despite my many requests for some relief.

4. "Savin dealers were additionally forbidden from purchasing supplies from sources other than Savin. My regional manager, Mr. Neil Henriksen, pliced the dealers during

inspections by viewing inventory in order to determine whether ther had been any attempt to buy toner, dispersant or paper supplies from sources, other than Savin. The dealers were aware of the fact that the purchasing of supplies from other manufacturers could result in termination of the dealerships. This was openly communicated to dealers at Savin Dealer Council meetings. I specifically recall statements that termination would result should a dealer buy his supplies from another manufacturer at dealer meetings by Messrs. Charlap (the Chairman of the Board), and Low (the President).

5. "Mr. Paul Charlap further told the Savin Management during our internal meetings that he did not like the fact that Savin had independent dealers. He also

stated that it was his private desire and intention to rid the Savin distribution network of as many dealers as possible in high population areas.

6. "The Savin Corporation was informed by me of numerous problems being unfairly inflicted upon the dealers in my area, which included the State of Texas. Those problems included the following:

A. Unfair distribution in Dallas, Texas of Savin 700 Series plain paper bond copiers; more of the machines being allocated to corporate Branches, with very few being made available to the independent Savin dealers. This resulted in sales being made by the Branch, because the dealers did not have the

inventory to deliver to customers.

B. Pursuant to Mr. Marcoux' instructions, Savin Branches received new product three or four months before they were available to independent dealers in branch areas. This unfair practice continued until Messrs. Marcoux and Nendick advised me that the attorney for Savin said that the practice will illegal.

D. "Jayco Systems was greatly suffering because of the poor quality of the Savin 300 Series photocopiers. The inability of the Savin 300 Series copiers to generate a profit was not the fault of Jayco, because it was not a profitable machine for to dealers, generally.

The Savin Corporation refused to rectify the wrong which was being suffered by Jayco.

E. "I was also personally aware of the excess inventory of Savin 700 plain paper bond copiers for the Dallas Branch at a time when the independent Savin dealers in the Dallas area were unable to get machines. Despite my many complaints, and my personal pleas to Mr. Robert Low (the President), it was not until approximately 1978 that inventories began to be fairly allocated. The dealers did not stand a fair chance to compete with the Savin Branch, so long as they had no machine inventory for

demonstration or delivery to a customer. I was further personally aware that the reason that Savin's copier inventory was not being fairly distributed to the dealers in the Dallas area was so that the Savin Branch could receive the benefits of the revenues from those sales, at the expense of the dealer who should have been entitled to machines. It was a conscious decision, it was unfair, and it was not corrected until Savin's attorney characterized it as illegal several years later.

F. "I was also aware that the Savin Corporation obtained the customer lists of Jayco Systems, Inc., and

that the Savin Branch utilized it, improperly, in going after Jayco's customers. The Dallas Savin Branch operated under instructions to go after Jayco's customers by means including the use of Jayco's confidential customer lists.

G. "Finally, during the timeframe of 1975 through 1979, there was no effective competition for the Savin 700 Series plain paper bond copiers in the marketplace. It was the most reliable and dependable copier in the market in its price range, generally under $6,000.00. It, alone, caused Savin to become number one in the industry in the United States, outplacing both Xerox and

IBM combined, according to the Savin Chairman of the Board and its President. The Savin copier equipment 'controlled the marketplace' because of its unique capabilities. No other copier was comparable, and as a result, the only competition for the sale of Savin equipment was other distributors of the Savin equipment in a given territory, such as Dallas.

Further, affiant sayeth not.

Larry Stutes

SUBSCRIBED AND SWORN TO BEFORE ME on this the 6th day of February, 1984.

EXHIBIT L

Sheri D. Smith
NOTARY PUBLIC in and
for Hillsorough County,
Florida

My commission expires:
February 22, 1984

CERTIFICATE OF SERVICE

This is to certify that a true and correct copy of the foregoing instrument has been forwarded to counsel of record, pursuant to Rule 5, Federal Rules of Civil Procedure, on this the 6th day of February, 1984.

Samuel L. Boyd

EXHIBIT M

IN THE UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF TEXAS

DALLAS DIVISION

JAYCO SYSTEMS, INC., JIM WOZNICK and SHIRLEY WOZNICK,	§	
Plaintiffs,	§	
vs.	§	
SAVIN BUSINESS MACHINES CORPORATION,	§	NO. CA3-78-0060-H
Defendant,	§	
vs.	§	
AMERICAN BUSINESS PRODUCTS, INC.,	§	
Third-Party Defendant.	§	

AFFIDAVIT IN CONNECTION WITH SAVIN MARKETING CONDUCT AND POLICIES

THE STATE OF TEXAS §
§
COUNTY OF DALLAS §

EXHIBIT M

BEFORE ME, appeared MARY L. WILSON, an individual residing in Austin, Texas, who previously managed the State of Texas copier business for the Savin Corporation, who is over eighteen (18) years of age and capable of giving an affidavit, who, after being first duly sworn, stated under oath as follows:

1. "My name is Mary L. Wilson. I am a resident of Austin, Texas.

2. "On January 1, 1980 I became employed by the Savin Corporation to manage the Savin copier business with the State of Texas. This involved management, supervision and bidding responsibilities in connection with both the annual contracts and open market purchase request. Although the annual rental bids were submitted directly from New

York, the open market purchase requests were bid from my office and usually under my signature.

"Prior to my selection as the manager for the State of Texas bond copier business for Savin, I worked for A. B. Dick and was similarly employed in connection with the bidding of office machine equipment on behalf of A. B. Dick to the State of Texas. I became familiar with the personnel, the issues, and the competitive conditions of bond copiers, as well as other office machines during this time. In the State of Texas copier markets, no real competition existed on copier contracts bid by Savin or Uni-Copy, since Savin Dealers and Savin cooperated on the bidding of Savin equipment.

3. "From and after my appointment as

the manager for the Savin State of Texas copier business, I was intimately involved in every aspect of supervising state agency customers who had either rented, leased or purchased Savin bond copiers and related equipment and supplies.

4. "Although I directly made no input for the annual rental contracts, I am aware that the pricing at which those contracts were bid was obtained through a cooperative effort between Savin Corporate representatives, Mr. Jim Lawson of Uni-Copy, the dealer representative, and state officials which included Mr. Trent Fowler. I personally participated in various formal meetings and informal "get togethers" with Savin Dealer representatives and Mr. Fowler present. At many of the informal meetings,

discussions regarding the prices at which bids should be submitted and strategies for maintaining the Savin machine population were discussed in detail. Pricing strategies relating to annual machine contracts, as well as open-market purchase requests were discussed and pricing agreements were made between Savin, its independent Dealers and State officials such as Mr. Fowler.

5. "Prices bid in connection with the State of Texas were not a reflection of a unilateral decision by Savin, but rather were a product of many conferences and meetings on the subject among Savin, its Dealers, Mr. Fowler and perhaps others. An example of the results of such a meeting is set forth in the Savin memorandum at Plaintiff's Ex. No. 4 from Ron Hoskings, a Savin Vice President.

It recognizes that prices for Savin copiers on open-market purchase requests were fixed by virtue of a meeting in Dallas, Texas. A copy of the memorandum setting forth the agreed bid prices was provided to Mr. Jim Lawson, a Vice President of an independent Savin Dealer.

6. On the basis of such meetings and upon express approval from Mr. Jim Lawson of Uni-Copy, I submitted bids for Savin on open-market purchases in connection with State of Texas copier business. Mr. Trent Fowler's continuing contribution was to monitor the bidders, the prices bid against the Savin equipment, as well as copier requisitions from the various State agencies, prior to the submission of such requests to vendors for bids. Mr. Fowler kept our office and Mr.

Lawson informed of these matters in order that Savin might increase and successfully protect its State of Texas copier population.

7. "Because of the influence of Uni-Copy and Mr. Trent Fowler, a State official of the State Auditor's office, I was not allowed to independently submit bids on behalf of Savin. I was bound by the Savin policy which required me to coordinate bids and pricing with both Mr. Lawson and Mr. Fowler. In the few instances in which I failed to coordinate bidding matters with either Mr. Lawson or Mr. Fowler, written complaints were submitted to my superiors.

8. "When Savin employed me in January, 1980, I recognized that the Savin Corporation had very little actual presence

in the State of Texas. Practicaly all of the marketing, customer relations, and maintenance of State of Texas copiers were handled by the various Savin dealers throughout the State of Texas. Those dealers managed the State of Texas copier business in territories mutually agreed between them and Savin. Savin, which relied on its influence over the independent Savin Dealers, had not developed its own alternative capability to market, install, service or successfully maintain a copier program in the State of Texas. One Savin Branch in Dallas was insufficient. Without the combination of the independent Savin Dealers, Savin had not developed the capability to comply with its obligations under the State of Texas contracts.

9. "Until my presence in Austin on behalf of Savin in January of 1980, virtually every aspect of Savin's State business, except for billing and receiving of monies, was coordinated for the Savin Combination by Mr. Jim Lawson of Uni-Copy in Austin. He handled the submission of virtually all bids and the marketing in large part for all of the cooperating Savin Dealers. He also coordinated the installation of copiers by selecting the installing Savin Dealer in the relevant territory in which a machine would be placed. Profits were split accoding to the agreement among Savin and the combination of Savin Dealers.

10. "One of my principal functions in assuming the management of Savin's State of Texas copier businss was to establish the

identity of the Savin Corporation as the vendor in the State of Texas contracts. Prior to my arrival, the State agencies considered the contracts to be those of Mr. Jim Lawson and Uni-Copy.

11. "I have reviewed the testimony of Mr. Neal Henriksen in this case. I have reviewed, specifically, his testimony regarding the policy of the Savin Corporation toward competition by independent Savin Dealers with the State of Texas set up among the dealers and Savin. Mr. Henriksen's description to the effect that dealers were "not to rock the boat" is correct. I am personally aware of situations in San Antonio and in El Paso in which an independent Savin Dealer attempted to bid in competition with the 'Savin Texas Combination.' Mr. Jim

Lawson of Uni-Copy requested both Dealers to withdraw their bids and share the profits of those transactions with Savin and Uni-Copy pursuant to the profit-splitting agreement then in effect among Savin and its Dealers. Both Dealers reluctantly withdrew their bids. This was in accord with the policy established by the 'Savin Texas Combination' for the State of Texas business.

12. "I am also aware that the State of Texas paid much more for Savin bond copiers through the bidding process than they would have had to pay if they had been ordinary retail customers. At a time when I was successfully bidding Savin copiers to the State of Texas for approximately $4,800.00, general retail customers and the public could purchase the same machine in Houston, for

instance, at approximately $2,200.00. There is no doubt in my mind that had competitive bidding been allowed to occur in the State of Texas business, Savin Copiers would have been purchased at lower prices. A look at the price competition in Dallas among Savin Dealers is an example of prices available to customers in areas where price competition existed.

13. "At any time had Savin lost the State of Texas annual rental contract for any particular contract category, no return of machines would have been expected nor likely. The loss of a rental contract should not suggest the return of rental machines. So long as State rentals or leased machines are satisfactorily performing, an agency usually continues to utilize the machine, unless a

better machine is available at a material cost savings. Thus, should Savin have lost the State of Texas annual rental contracts to another supplier in 1980, it would not have had to return 2,000 machines. In all likelihood, most, if not all, of the 2,000 machines would have continued to have been rented from Savin. Each annual contract contains renewal rental rates. These bids provide a basis upon which an agency can determine to continue to use a machine, although that particular brand or make of machine may no longer be the 'contract machine.' Only mechanical _____, over some reasonable time, would account for any loss of the Savin machine population.

14. "I know that Mr. Jim Lawson of Uni-Copy was able, through personal contact

with State of Texas officials, including Mr. Trent Fowler and Mr. Robert Schneider, to manipulate specifications to Savin's advantage on bid requests for copiers. Mr. Lawson has related instances in which specifications have been 'reworked over dinner in the evening' with Mr. Robert Schnieder.

15. "From 1977-1980, prior to my assumption of the management of Savin's State of Texas business and briefly thereafter, I observed virtually every office equipment bid award opening which would Mr. Fowler would attend with some representative of Uni-Copy and, at times, a representative of Savin. Mr. Fowler seldom, if ever, sat with any other vendor, and on the other hand, almost always sat with Savin or Uni-Copy representatives.

16. "Mr. Fowler not only worked for State of Texas, but he also worked very hard for Savin. Mr. Fowler was instrumental in obtaining a lobbyist for the Savin Corporation. He visited Savin in New York to advise Savin regarding the need for a lobbyist, and presented an overview presentation to Savin's attorney, Mr. Richard Craig in Austin, to explain the necessity for Savin's establishment of a formal lobbyist in Austin. Mr. Richard Craig, Savin's Attorney, was shocked that a representative of the State Auditor's office would present a position for Savin as Mr. Fowler had done. Moreover, Mr. Craig expressed his opinion that the parinoia exhibited by Mr. Fowler and Uni-Copy was not justified. He further advised that perhaps some of the irritation with the various State

Agencies was caused by Mr. Jim Lawson's unnecessary involvement in State affairs. Mr. Fowler also presented the same position at Savin Dealer meetings in which he encouraged the Savin Dealers to cooperate and work together to retain a lobbyist for their benefit, and to protect the system as it existed. Also present at that meeting were: Gabe Carlin, Executive Vice President of Savin; Ron Hoskings, National Marketing Director of Savin; Dennis Lawson, District Manager for the Savin Corporation; Mary Wilson, State Account Manager for Savin; Jim Lawson, Vice President and General Manager for Uni-Copy, and independent Savin Dealer.

17. "I am also personally aware of the scope and purpose of the Savin VIP trips which many State of Texas officials took. I

personally participated in some VIP trips. The principal purpose of such trips was to entertain and befriend State of Texas officials, generally in New York. There was no legitimate busines need for such trips. On the evening after one short trip to Durham, North Carolina, for example, State of Texas officials were flown by Savin's private jet to New York City for purposes of entertainment. The next morning, a limousine took the State of Texas party to Valhalla, New York for a short presentation on the history of the Savin Corporation. Thereafter, the State of Texas party was provided an elegant luncheon, including wine and other fine appointments, in the Boardroom of the Savin Corporation. After lunch, the State officials returned by limousine to New York City

for return to Texas. The overriding purpose of the trip was to flatter the Texas officials, to make them feel that they were important to Savin, and to strengthen Savin's ties to the State of Texas. There was no business purpose whatsoever for the trip. The information provided at either Durham, North Carolina or Valhalla, New York could easily have been presented in Austin, Texas. The real purpose of the trip was to provide the private jet trip to New York City, the Broadway show, dinner at Tavern On The Green in Central Park, the room at the Waldorf Astoria, the limousine transfer from New York City to Valhalla and back to New York City, and the final return jet flight. Had presentations occurred in Austin, there would have been no excuse for providing these

luxuries."

18. "From the introduction of the Savin 700 Series bond copiers in 1976, through at least 1981, Savin had virtual control over the contract categories for bond copiers on which it bid. The control has been absolute in the rental contract area, and has been virtually absolute in the open-market purchase portion of the State business. In literally hundreds and hundreds of open-market requests for bond copiers, I can safely state that Savin was able to control as much as 95% of the bids on which it competed. The number may be even higher. Savin was able to maintain control over the State of Texas business because of the peculiarity and procedures controlling that business, the cooperation and combination of Savin with its

willing or unwilling Savin Dealers in the State, a very dependable, reliable and relatively inexpensive plain paper bond copier, and the abnormally close relationships between Savin, Uni-Copy and various State of Texas officials, including Mr. Trent Fowler and Mr. Robert Schneider. Savin not only attempted, but achieved a monopoly in the various bond copier contract categories, as well as in open-market purchase transactions. That monopoly resulted from the availability of a superior copier in a price range 'all its own,' control over pricing and restraints on dealer competition, as well as through unshakable political relationships with Mr. Fowler and Mr. Schneider."

Further, Affiant Sayeth not.

By: Mary L. Wilson
Mary L. Wilson

EXHIBIT M

SUBSCRIBED AND SWORN TO BEFORE ME on this the 17th day of April 1983.

Susan L. Keeling
SUSAN L. KEELING, Notary Public
in and for the State of Texas

EXHIBIT N

IN THE UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF TEXAS

DALLAS DIVISION

JAYCO SYSTEMS, INC., JIM WOZNICK and SHIRLEY WOZNICK Plaintiffs, V. SAVIN BUSINESS MACHINES CORPROATION, Defendant, V. AMERICAN BUSINESS PRODUCTS, INC., Third-Party Defendant	§ § § § § § § § § § § § § § § § §	CIVIL ACTION NO. 3-78-0060-H

DEPOSITION OF NEIL HENRIKSEN

TAKEN FOR PLAINTIFF

DATE REPORTED: September 1, 1982

REPORTER: JUDY G. WILLIAMS

feelings without identifying who it was or what means he would have or knowing it.

Q. (By Mr. Boyd) Did you communicate to the dealers Savin's policy on whether or not the dealers should bid against Uni-Copy on open market bids for photocopiers, did you?

MR. BRYANT: I object to the ambiguous question.

A. (By the witness) Yes.

Q. Okay. What did you tell the dealers, the Savin dealers here in the State of Texas in connection with that?

A. Well, it was Savin's policy at that particular time that nobody was to rock the boat.

Q. Did there ever occur any

situation in which any Savin dealer -- well, let me ask you this. Let me rephrase it.

What do you mean by rock the boat, no one was to rock the boat?

A. Well, we had a pretty sweet arrangement, Savin did at that time, set up for everybody as far as compensation for the dealers, and they were handsomely paid, and it was pretty much felt with the kind of money that they were getting, which was more than what they were due, that if they didn't cooperate...

that they would be canceled.

MR. BRYANT: I object to the nonresponsive answer.

Q. (By Mr. Boyd) Now, in connection with what you have just said about what you communicated to the dealers about not rocking the boat, did there ever occur a situation, for instance in El Paso, where somebody rocked the boat?

MR. BRYANT: I object to the vague and ambiguous question.

Q. (By Mr. Boyd) In connection with the State of Texas business.

A. I remember, I remember --

Q. The answer has to be yes or no.

A. Yes.

Q. What was the instance, sir?

A. Bill Jones wanted to bid on a machine and on T.D. packs.

Q. Who was he bidding against?

A. Uni-Copy.

Q. Did it relate to Savin equipment?

A. Yes.

Q. And T.D. packs?

A. Yes.

Q. What was your reaction when you found out...

Mr. Jones wanted to bid that?

A. I didn't care one way or the other, but my boss did.

Q. Who was your boss at that time?

MR. BRYANT: I object to the nonresponsive answer.

Q. Did anybody have a reaction at Savin when they found out that Mr. Jones was apparently going to put a bid against Uni-Copy?

A. Mr. Stutes did.

Q. What was his reaction?

A. He wanted to go in and set another dealer up.

Q. Did you participate in any response to Mr. Jones?

A. Yes.

Q. What was your participation?

A. I went out and solicited another dealer.

Q. When you say you went out, what do you mean?

A. I went out and interviewed another dealer, a 3M dealer in El Paso.

Q. Did you visit with Mr. Jones?

A. I didn't visit with Mr. Jones.

Q. What did you tell Mr. Jones?

A. I showed him the application for another...

dealer in El Paso, and asked him if he wanted to be the dealer.

Q. Did you convey any message to Mr. Jones in connection with his apparent interest in rocking the boat?

MR. BRYANT: I object to the leading question.

Q. (By Mr. Boyd) What did you tell him?

A. I told him we would prefer to have him as a dealer because he was the best in town, but if he wouldn't play ball, we would have to appoint somebody else, and that it was not my feelings, but that was the way it was going to have to be.

Q. Did Mr. Stutes direct you to convey any specific comment from him to Mr.

Jones if he didn't go along?

MR. BRYANT: I object to the leading question.

A. (By the witness) Nothing really other than he would be canceled.

Q. Did he, did Mr. Stutes indicate to you that you should convey to Mr. Jones any specific slang if he did not go along?

A. He indicated that we would probably cut his nuts off.

EXHIBIT O

IN THE UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF TEXAS

DALLAS DIVISION

JAYCO SYSTEMS, INC., JIM WOZNICK and SHIRLEY WOZNICK Plaintiffs, V. SAVIN BUSINESS MACHINES CORPROATION, Defendant, V. AMERICAN BUSINESS PRODUCTS, INC., Third-Party Defendant	§ § § § § § § § § § § § § § § § §	CIVIL ACTION NO. 3-78-0060-H

AFFIDAVIT OF PAT LOCONTO
IN SUPPORT OF SUMMARY JUDGMENT

THE STATE OF TEXAS §
§
COUNTY OF DALLAS §

BEFORE ME, the undersigned authority, on this day personally appeared PAT

LOCONTO who, after being first duly sworn, stated under oath as follows:

1. "My name is Pat Loconto, and I am a National Partner within the Management Consulting Division of Touche, Ross & Co. I office in Dallas, Texas.

2. "Touche, Ross & Co. has been retained by the Plaintiffs in this case to offer expert testimony in connection with the calculation of damages resulting from the various claims of the Plaintiffs.

3. "I have been deposed four times by counsel for the Savin Corporation. As a result of extensive examination, I recognized that one assumption I had made underestimated costs incurred by the Plaintiffs in my calculation of the State of Texas lost profits. Appropriate corrections have been made with

the corrected projection now set forth at Plaintiffs' Ex. No. 3 of Plaintiffs' Exhibits in support of their Motion for Summary Judgment.

4. "The numbers reflected in the estimates of both past and future lost profits are very conservatively set forth. The estimated damages are conservative for several reasons:

a. Costs as a percentage of revenues was overstated, as it included cost ratios for Jayco which included the higher costs of the Savin 300 plain paper bond copier which none of the other Dallas entities nor the Corporation had to service. Thus, costs were overstated, and net income, correlatively, understated.

b. Revenues generated by Copy &

Litho of Fort Worth, Texas were not included in revenue projections in "Lost Jayco Profits Per Territorial Dealer Revenues", and thus such projections conservatively understate the net income Jayco would have earned in the Territory.

c. From and after 1979, revenues in the territory are kept constant. Such revenues were extended on a straight-line basis, despite the fact that Savin representatives have indicated that at the time Savin was number one in the placement of bond copiers, outplacing both Xerox and IBM combined. Thus, a straight-line extension of revenues from and after 1979 is an understatement for purposes of conservatism.

The numbers reflected in the projections are conservatively set forth for the

above and other reasons. The numbers upon which the projections are based originated from documents provided by the indicated Savin Dealers, Savin Branch, Savin Corporation, and the State of Texas.

5. "The Adjustment Factor applied to 1975-1982 dollars is the GNP Implicit Price Deflator provided by the U.S. Department of Commerce, Bureau of Economic Analysis. This Factor is generally utilized to bring historical dollars to present values. The Adjustment Factor applied to 1983-1986 dollars is the Intermediate Taxable Government Bond Yields which was obtained from the Standard & Poors publication, "Credit Week". This factor is utilized to discount future dollars to present values. Both sets of factors are utilized not only in

government and industry, but have been utilized previously in estimating damages in litigation. All amounts reflected herein have been so adjusted.

6. "Plaintiffs have alleged violations by the Savin Corporation in connection with its purchase of the Savin copier business in the Dallas area. The damages incurred by Jayco according to Plaintiffs' allegations would consist of monies spent on the Savin 300 Series plain paper bond copiers and the non-compete agreement which Plaintiffs allege was violated by the Savin Corporation. Those damages identified in accordance with actual payments by Jayco and adjusted by the Implicit Price Deflator would constitute the sum of not less than $500,146.00. Per Plaintiffs' counsel's

instructions, that figure is included as part of Jayco's claims for damages under Fraud, RICO and Breach of Contract.

7. "Plaintiff Jim Woznick has also claimed damages in the form of lost salary by virtue of Savin's violations of Fraud, RICO and Breach of Contract. Those figures, previously set forth in deposition, constitute a sum of not less than $594,092.00.

8. "Jayco has also claimed damages arising from losses directly related to the Territory and the State of Texas copier business. Under the theories of Fraud, RICO and Breach of Contract, Jayco's damages may be broken down as follows:

a. Lost profits from the sales of additional dealers appointed in the Territory in the amount of not less than $404,439.00

during the period of 1976-1977.

b. Lost profits from the Savin Branch related sales in the Territory during the period of 1976-1986 constitutes a sum of not less than $4,393,715.00.

c. Lost profits from the State of Texas bond copier business. These damages from 1976-1986 total not less than $9,510,824.00.

d. Jayco has also claimed for damages due to acts of Unfair Competition at the instance of the Savin Corporation. Such damages include those same damages set forth above in connection with lost Territorial profits and the State of Texas lost profits.

9. "Plaintiffs have claimed damages due to violations of the Antitrust laws by the Savin Corporation and others in com-

bination with it. Those antitrust damages can be categorized into two dinstinctive markets:

a. Territorial lost profits determined from the sales of the additional appointed Savin Dealers and the Savin Branch during the period 1976-1986 of not less than $6,762,224.00.

b. Damages to Jayco in connection with the State of Texas bond copier business from 1976-1986 of not less than $9,510,824.00.

The total damages incurred as a result of the claimed Antitrust violations by the Savin Corporation is the sum of not less than $16,273,048.00. The figures forming the basis for these projections have in large part been obtained directly from the State of

Texas, the Savin Corporation, and the Savin Branch, with some additional documentation obtained directly from local Savin Dealers.

10. "Plaintiffs have also claimed for an award by the Court for the unjust enrichment obtained by the Savin Corporation combination and conspiracy. Since the lost profits of Jayco and these projections have been understated by virtue of overstating the expense ratio, Savin has been unjustly enriched not less than the sum of (1) lost profits earned in the State of Texas business in an amount of not less than $9,510,824.000, (2) profits wrongfully obtained after the reinstatement of the Savin Branch bond copier operations in 1976-1986 in an amount of not less than $4,393,715.00 and (3) monies received by Savin for the Savin 300 machines

and money paid by Jayco for the non-competition covenant in an amount of not less than $500,146.00, for a cumulative sum for unjust enrichment in the amount of not less than $14,404,685.00.

11. "I have been qualified and have testified as an expert in similar Antitrust and business-related cases before. I have utilized those professional and business methodologies which have been utilized in both business and in formal court procedures.

12. "The Savin Corporation has presented no documentation which would suggest that any of the figures utilized in these projections over-estimates any loss or includes any factor not justified on the records of this case."

Further, affiant sayeth not.

EXHIBIT O

By /s/ P.A. Loconto
PAT LOCONTO
National Partner

SUBSCRIBED AND SWORN TO BEFORE ME on this the 15th day of April, 1983.

/s/ Susan L. Keeling
NOTARY PUBLIC in and for
the State of Texas

APPENDIX III

85-1856

Supreme Court, U.S.
FILED
APR 29 1986
JOSEPH F. SPANIOL, JR.
CLERK

No.

IN THE

Supreme Court of the United States

OCTOBER TERM, 1985

JAYCO SYSTEMS, INC.,

Petitioners,

v.

SAVIN BUSINESS MACHINES CORPORATION

Respondent.

APPENDIX III TO THE PETITION FOR WRIT OF CERTIORARI EXHIBITS P — Y

INDEX OF EXHIBITS

APPENDIX I

EXHIBIT A: Order Denying Petition For Rehearing And Suggestion For Rehearing En Banc

EXHIBIT B: Opinion, Jayco Systems v. Savin Business Machines Corp., 777 F.2d 306 (5th Cir. 1985)

EXHIBIT C: District Court Final Judgment

EXHIBIT D: Oral Deposition Of Trent Fowler

EXHIBIT E: Oral Deposition of Calvin Holman

EXHIBIT F: Deposition of Jim Woznick

EXHIBIT G: Affidavit of Jim Woznick

EXHIBIT H: Oral Deposition of Jim Woznick

EXHIBIT I: Affidavit of James Woznick

APPENDIX II

EXHIBIT J: Affidavit of Jerry M. Andreff

EXHIBIT K: Affidavit of Robert Mayes

EXHIBIT L: Affidavit of Larry Stutes

EXHIBIT M: Affidavit of Mary L. Wilson

EXHIBIT N: Deposition of Neil Henriksen

EXHIBIT O: Affidavit of Pat Loconto

APPENDIX III

EXHIBIT P: Deposition of Savin Business Machines Corporation, by Max Schultes

EXHIBIT Q: Affidavit of Collene Collins

EXHIBIT R: Woznick Letter of July 8, 1976

EXHIBIT S: Oral Argument On Summary Judgment Before The Honorable Barefoot Sanders

EXHIBIT T: Oral Deposition of Jack Bishop

EXHIBIT U: Affidavit of Jerry Andreff

EXHIBIT V: Oral Deposition of Shelby D. Hunt

EXHIBIT W: Memorandum In Support Of Plaintiffs' Motion for Summary Judgment

EXHIBIT X: Brief of Appellant

EXHIBIT Y: Oral Deposition of James P. Lawson

EXHIBIT P

IN THE UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF TEXAS

DALLAS DIVISION

JAYCO SYSTEMS, INC.,	§	
JIM WOZNICK and	§	
SHIRLEY WOZNICK	§	
	§	
V.	§	CIVIL ACTION
	§	NO. 3-78-0060-H
SAVIN BUSINESS	§	
MACHINES CORPROATION	§	

DEPOSITION of SAVIN BUSINESS MACHINES CORPORATION, by MAX SCHULTES, pursuant to Agreement, taken by Counsel for Plaintiffs, held at Savin Busines Machines Corporation, Columbus Avenue, Valhalla, New York on Wednesday, January 30, 1980 at Ten o'clock a.m.

DEPOSITION OF MAX SCHULTES

EXHIBIT P

MR. BOYD: Yes, has he personally.

Q. Do you keep up with the competitive machines in your price range and in your purpose range?

A. Well, when we came out with the 700, the first year or two we had no competitors, you know.

Q. Who, today, after that first couple of years? Is there anybody who is a strong competitor as far as placing machines in this same price range for these purposes?

A. Well, you have Cannon is one. Saxon is one. Today you have Sharp. You have Royal in a certain class. You have Minolta. Practically everything out of Japan is now catching up with Savin.

Q. When you say "catching up with

Savin," you mean they are starting to market liquid toner machines in this price range?

A. Not liquid toner; powder toner. The only three liquid toner machines today are Savin, Saxon and Cannon. The rest is all powder.

Q. Do you have any indication that the Cannon machines are outplacing the Savin machines today?

A. I don't think so.

Q. What about the Saxon machines in this price range and for office purposes, are they outplacing Savin...

EXHIBIT P

machines?

A. What do you mean by "outplacing?"

Q. Number of units.

A. No, we are the leader in placing units.

Q. How long have you been the leader in placing units, do you know?

A. I think '78 and '79.

Q. I have read some Savin advertisements and I may not be using the exact words, but are you aware of advertisements of Savin that have said that you are now outplacing Xerox and IBM combined?

A. Yes, that's right, with numbers of machines, which is a different -- if you go by quantity of copies, it's a different

ballgame.

Q. But the number of machines?

A. The number of machines we have placed.

Q. The two combined?

A. Yes, that's the advertisement.

Q. Is it true?

A. It's true. Data Quest came out with that.

Q. I might say, with no tongue in cheek at all, that's quite an accomplishment.

A. Thank you.

Q. When were you first aware that you were...

outplacing Xerox or IBM, do you recall?

A. No. That's Marketing.

Q. Marketing?

A. I look at these things and --

Q. Sure.

For the quality of the product and the price, the price range here in the 700 Series machines, is there another machine of those you mentioned, Cannon, Sharp, Royal or Minolta, that gives you as good a quality product and is as dependable and reliable as the Savin machines?

A. I don't know the reliability because we don't have information on that.

Q. Marketing, again?

A. I don't know. Marketing. I don't have any information on that either. A

company like Data Quest would be able to supply you with that kind of information, but they do the market study for the whole industry.

Q. Does the fact that you are outplacing IBM and Xerox combined give you some idea of the competitiveness of your product?

A. How you --

Q. Does that give you some indication of how strong a consumer product it is?

A. Yes.

Q. Do you have any reason to believe that either Cannon, Saxon, Sharp, Royal or Minolta, do you have any reason to believe that they're going to be outplacing IBM and Xerox combined in the near future?

A. I don't think so.

Q. Earlier, Mr. Schultes, we talked generally about the dependability and reliability of the 300's and I recall some testimony regarding the fact that if the proper service is given the machine that the machine will run and be dependable and reliable?

A. (Shaking head yes.)

Q. If the proper service requirements are excessive, the requirements in manhours to keep them running --

A. Yes?

Q. -- is that a problem as far as profitability to this corporation?

A. Can you phrase it a little bit different?

Q. Yes.

Even if the machine can be kept running, the 300 Series machine, can be kept running with proper servicing, if proper servicing requires an inordinate amount of time, can that not have a serious effect on the profitability of those machines on rental?

EXHIBIT Q

IN THE UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF TEXAS

DALLAS DIVISION

JAYCO SYSTEMS, INC., JIM WOZNICK and SHIRLEY WOZNICK,	§	
Plaintiffs,	§	
vs.	§	
SAVIN BUSINESS MACHINES CORPORATION,	§	NO. CA3-78-0060-H
Defendant,	§	
vs.	§	
AMERICAN BUSINESS PRODUCTS, INC.,	§	
Third-Party Defendant.	§	

AFFIDAVIT OF COLLENE COLLINS

THE STATE OF TEXAS §
§
COUNTY OF DALLAS §

BEFORE ME, the undersigned authority, on this day personally appeared COLLENE

COLLINS who, after being first duly sworn, stated under oath as follows:

1. "My name is Collene Collins. I am over the age of eighteen (18) years, of sound mind, and competent to make this affidavit in all respects. I affirm that the statements contained herein are within my own personal knowledge, and are true and correct.

2. "I received my undergraduate degree from Kansas University, and my Master's in Business Administration from Columbia University in New York City, New York. I am presently employed as an Independent Contractor, associated with Henry S. Miller, Commercial/Retail Division of Dallas, Texas.

3. "Subsequent to receiving my

M.B.A., I did work with Citicorp in New York City. There I performed various banking functions, and later moved to Dallas, Texas where I became employed by Mercantile National Bank at Dallas.

4. "During my tenure with Mercantile National Bank at Dallas, I served in various capacities. My responsibilities generally concerned the lending of money for various business pursuits. In that regard, I was in charge of the Private & Professional Banking Departments. I further was the Chairman of the Private Banking Loan Committee. I also served as an Alternate Member for the Executive Loan Committee of Mercantile National Bank. In all of these positions, I was constantly evaluating and rendering decisions on requests for business and other

types of loans. My individual discretionary lending authority was $1,000,000 for an unsecured loan and $2,000,000 for a secured loan. That is, I was authorized to lend those amounts of money "on the spot," without referring the loan request to any committee for approval prior to funding. Upon my departure from Mercantile National Bank at Dallas in the Summer of 1983, I was a Senior Vice-President.

5. "I have been requested to evaluate the creditworthiness of Jayco Systems, Inc., and Mr. and Mrs. Woznick in 1976 with respect to whether or not the Woznicks and Jayco Systems, Inc., possessed sufficient creditworthiness for a line of credit sufficient to allow them to successfully manage the State of Texas bond copier business, both rentals

and sales, machines and supplies, from 1976 to date.

6. "In arriving at my evaluation, I have conferred with Mr. James Woznick and Mr. Robert White, presently the President of InterFirst Galleria and formerly the lending officer for Jayco Systems, Inc., at the First National Bank of Dallas. I have been provided financial summaries, prepared by Touche, Ross & Co., reflecting profits from the State of Texas copier business. I understand that the data reflecting the revenues and placements was obtained directly from records generated by the Savin Corporation, the supplier, and maintained by the State of Texas. I also understand that the costs assessed against those revenues were determined by Touche, Ross & Co., which

utilized the actual cost ratios incurred by Jayco Systems, Inc., in its day-to-day business. I have additionally reviewed various other financial statements which I deemed material.

7. "I have determined from my personal investigation and my evaluation of various financial documents that the creditworthiness of Jayco Systems, Inc. and Mr. and Mrs. Jim Woznick in 1976 was excellent. The Woznicks and their business made regular and timely payments of their obligations to the First National Bank and managed their credit exposure in an excellent manner. Both the Woznicks and their business, Jayco Systems, Inc., in 1976, would have been considered excellent banking prospects, particularly in regard to the State of Texas copier

business.

8. "My opinion, based upon my banking experience and my factual investigations, is that any competent banker would prob-ably have granted Jayco Systems, Inc., the financing it needed to initiate the State of Texas copier business in 1976. In my position at Mercantile Bank I would have approved such financing.

9. "Further, once the first year of the contract had been completed and Jayco's banker could see that the contract generated the revenues which it actually generated, the line of credit could easily have been extended, in order to finance the State's increasing demand for Savin products. The State of Texas copier business was obviously an extremely lucrative contract, and the pro-

fits generated by that contract would have easily allowed Jayco Systems, Inc., to repay its obligations in a timely and satisfactory manner. Although the assumptions of Touche, Ross & Co., did not require that Jayco Systems, Inc., reinvest its profits in the acquisition of product for the contract, Mr. Woznick indicated that Jayco would, indeed, have applied its profits to the reduction of the line of credit debt, making the loan even more secure and desirable from the standpoint of the Bank. Furthermore, Mr. Woznick indicated that all payments from the State of Texas would be assigned to the bank and applied first to the debt and then to Jayco.

10. "As a Senior Lending Officer at the Mercantile National Bank at Dallas, under these assumptions and circum-stances I would

have enjoyed the opportunity to have extended the necessary credit to Jayco Systems, Inc., and to have played some part in what would have been a very successful undertaking.

11. "Further affiant sayeth not."

Collene Collins
COLLENE COLLINS

SUBSCRIBED AND SWORN TO BEFORE ME on this the 12 day of February, 1984.

Susan L. Keeling
NOTARY PUBLIC, State of Texas

My commission expires:
September 19, 1985

EXHIBIT R

July 8, 1976

Mr. Art Nendick, Vice President
Savin Business Machines Corporation
Columbus Avenue
Valhalla, New York 10595

Dear Art:

Since our total dedication to SAVIN began April 30, 1986, Shirley and I have instilled renewed efforts and enthusiasm to make Jayco Systems, Inc., a better and exclusive Savin Dealer. We have had many adversitites to overcome, including the obtaining of sufficient Savin 750s, but still believe in the ultimate potential of this dealership - that is until a recent action by Savin branch operations here in Dallas.

I received a phone call July 1st from Steve Sachs, who was in Dallas to hire a replacement for Bob White, former branch manager.

Steve informed me that Mary Ann Hardin, sales person for the Dallas branch, had an opportunity to replace one of Jayco's 300 bond rental accounts with a Savin 750 copier. According to Steve, he has told Mary Ann and all other sales personnel (our former empoyee, Dave Riley, included) that Jayco accounts should not be solicited by Savin branch representation. Steve suggested that we call on the account and handle the prospective 750 copier sale.

The account, Malcolm Dade, had already sent Jayco a letter of cancellation on the 300 bond rental dated June 25, 1976, and received by Jayco on June 26, 1976. The normal action for Jayco is that we contact the account to determine the reason for the cancellation and see if we might save the account. The rental

base on the account is $62.00 per month plus meter, and the average billing to this customer for the past three months has been $151.38.

I visited the Malcolm Dade office Friday, July 2. On entering the office, you enter a reception area where the receptionist is seated behind a glass enclosure. Immediately thru the enclosure and behind the receptionist at the desk stands the Savin 300 bond copier - very evident even to an untrained eye. I was referred to the office manager, Mrs. Bonnie Riggs. My reception was very cool after I presented my card. She informed me that Jim Holton and Mary Ann Hardin had made a cost comparison for her based on recent JAYCO RENTAL INVOICES. Their comparison showed Mrs. Riggs a much more econo-

mical program with a 750 rental program! Apparently not at [illegible] the published rental programs presented in Savin's [illegible].

I questioned the word "rental" as opposed to a lease or lease-purchase plan as I was sure tnat she could not rent a 750 for less than $151.38 per month. Mrs. Riggs was adamant that it was a rental program offer and she was not interested in a lease or lease purchase plan. She also wanted to know when we were going to remove the 300 copier as she was told by Jim Holton and Mary Ann Hardin that due to certain technicalities between Jayco and Savin they could not place the 750 copier untl she got rid of the 300 from Jayco. This makes one wonder about the integrity Savin has with regard to a

$50,000.00 non-compete agreement with this dealer.

Actually, the damage had already been done prior to Steve Sachs' call on July 1. The 300 copier had been cancelled, and the only way Mrs. Riggs will consider Jayco placing the 750 in their office is if we offer a "better deal" than the Savin branch.

Art, as you are well aware, we are not in a position to rent 750 copiers - even if we were able to obtain ample machines - especially on a rental program for less than the 300 bond! We are striving to continue monthly note payments on our 300 copiers, as well as on our so-called non compete note with Savin. Our commitment to Savin becomes more insurmountable when we consider com-

petition from the branch itself, as well as the new dealers who need only to operate their business with the new 750 copiers and not fight the perils of the Savin 300 program.

Based on our total commitment to Savin Business Machine, and our non compete note payments, it is imperative that immediate action be taken to rectify these infringements upon our agreement. Your immediate reply will be appreciated as this matter and its resolution have a direct bearing on Jayco's future business possibilities.

Thanking you in advance for your cooperation and expedient handling of this matter, I remain,

Respectfully,
JAYCO SYSTEMS, INC.

EXHIBIT R

/s/ Jim

Jim V. Woznick, President

sbw

bcc: Neil Henriksen

EXHIBIT S

IN THE UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF TEXAS

DALLAS DIVISION

JAYCO SYSTEMS, INC., JIM WOZNICK and SHIRLEY WOZNICK	§	Docket No. CA3-78-0060-H (CA3-78-1393-D transferred and consolidated with and into CA3-78-0060-H)
Plaintiffs,	§	
V.	§	
SAVIN BUSINESS MACHINES CORPROATION,	§	Dallas, Texas February 24, 1984 8:30 O'clock A.M.
Defendant,	§	
V.	§	
AMERICAN BUSINESS PRODUCTS, INC.,	§	
Third-Party Defendant	§	

VOLUME I
ORAL ARGUMENT ON SUMMARY JUDGMENT
BEFORE THE HONORABLE BAREFOOT SANDERS

TRANSCRIPT ORDERED BY: SAMUEL L. BOYD
(Boyd & DuBose)

APPEARANCES:

For the Plaintiffs: Boyd & DuBose
BY: SAMUEL L. BOYD

ORAL ARGUMENT ON SUMMARY JUDGMENT

EXHIBIT S

TIMOTHY M. FULTS
3500 InterFirst One
Dallas, Texas 75202

For the Defendants:

Carrington, Coleman,
Sloman, Johnson &
Blumenthal
BY: CORBET F. BRYANT
TYLER A. BAKER
LYMAN G. HUGHES
2500 South Tower
Plaza of the Americas
Dallas, Texas 75201

ORAL ARGUMENT ON SUMMARY JUDGMENT

calculations but it isn't necessary for us to come in, and I think all we are doing is creating fact issues as to how you mechanically calculate things, whether he has correctly chosen the right service calls or whether he has correctly made one calculation or another whether they would have made money. If that is all we are down to then there would be a fact issue there if we brought in the affidavit. But he bases his calculations on a number of assumptions and they are just all wrong. He assumes that causes of actions are established. His affidavit does not establish a cause of action.

With regard to the Colleen Collins affidavit, Mr. Bishop was not a retained expert for us. The reason Mr. Bishop was deposed was that Mr. LaConta indicated that

he was sure that there was capitalization there because he was told that somebody at Republic could do it. So we deposed Republic. They state that there was an application for a loan, $86,000.00 was turned down and Mr. Bishop was asked by me "If you had been asked to finance the State of Texas thing which you see here would have been favorably received?"

"The answer is "No."

Now, Colleen Collins in her affidavit which has just been recently filed. What does she say? She doesn't say that anyone approached her when she was at the Mercantile for any kind of loan to Jayco. That doesn't happen. What is she doing? She is looking back -- well, she is doing several things. She has...

EXHIBIT T

IN THE UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF TEXAS

DALLAS DIVISION

JAYCO SYSTEMS, INC., JIM WOZNICK and SHIRLEY WOZNICK Plaintiffs, V. SAVIN BUSINESS MACHINES CORPROATION, Defendant, V. AMERICAN BUSINESS PRODUCTS, INC., Third-Party Defendant	§	CIVIL ACTION NO. 3-78-0060-H

ORAL DEPOSITION OF

JACK BISHOP

ANSWERS AND DEPOSITION OF JACK BISHOP, produced as a witness at the instance

ORAL DEPOSITION OF JACK BISHOP

EXHIBIT T

of the Defendant taken in the above styled and numbered cause at 10:00 a.m. on the 20th day of December, 1982 before David Cogburn, a Certified Shorthand Reporter in and for the State of Texas, County of Dallas, at the offices of CARRINGTON, COLEMAN, SLOMAN & BLUMENTHAL, 2500 Plaza of the Americas, South Tower in accordance with the Notice and the agreement hereinafter set forth.

ORAL DEPOSITION OF JACK BISHOP

A. Not to my knowledge.

Q. Based on your experience as a loan officer -- strike that.

MR. BRYANT: I'll pass the witness.

CROSS EXAMINATION

BY MR. BOYD:

Q. Mr. Bishop, do you remember that question that dealt with four hundred thousand dollars investment a moment ago to which I made an objection?

A. Yes, sir.

Q. It's a fact you don't know anything about any State of Texas contracts nor the elements of that contract, isn't it?

A. That's correct.

Q. So you don't know whether or not

there was any exposure of the bank in connection with such contracts; is that correct?

A. That's correct.

Q. You don't know whether there was any exposure to Jayco, some contracts had been obtained, do you?

A. No, sir.

Q. And whether or not a bank loan was ever given to function from, and as to whether or not the...

bank that makes a loan, exposure or risk is always an important element in whether or not to make a loan, correct?

A. That is correct.

Q. And in connection with any of the State of Texas billings, you were not aware of any risk that might have existed, is that correct?

A. I was not aware of the State of Texas business that you refer to.

Q. All right. Do you have - I have not seen here in the evidence - do you have any loan application ever submitted to you by Jayco Systems? Not Mr. Andreff, but Jayco Systems itself?

A. Mr. Andreff represented Jayco Systems to me.

Q. Do you have any written application for a loan from an officer of Jayco Systems?

A. As I recall, one of the letters from Mr. Andreff outlined the loan request.

Q. Okay. Did this bank in 1976 have formats, that is, a printed format that people would fill out or buisness would fill out when it wanted a loan?

A. Not that any buisnesses would fill out, no.

Q. And you did not at that time have a practice of asking for specific documents from a business that might might want a loan, such as resolution authorizing a loan and other such submissions?

A. If we had gotten to the point where we approved the credit facility, then we would have asked for the corporate resoltuions if the company requesting the credit was a corporation. We have other documents we use covering proprietorships and partnerships.

Q. What kind of credit check did you run on Mr. Woznick personally?

A. None.

Q. If Mr. Woznick was going to be responsible for the loan and Jayco obtained

the loan, would his creditworthiness be an element at that time to consider?

A. I was told by Mr. Andreff that Mr. Woznick's guaranty of any credit request was not to be considered.

Q. Had Jayco been requesting a loan upon which you would have been able to rely upon a guaranty from Mr. Andreff and Mrs. Woznick, would their financial statements and their financial...

situation have been important to you in making or not making the loan?

MR. BRYANT: Object to the question as being vague and ambiguous.

Q. Would you have utilized the creditworthiness of Mr. Andreff and Mrs. Woznick in connection with any loan made to Jayco had they been willing to make the guarantee or --

A. If they were gonig to be liable, yes.

Q. And you did not consider their personal creditowrthiness, is that correct?

A. That is correct. In connection with the loan that Mr. Andreff requested, that is right.

Q. And Mr. Andreff was basically

seeking to buy out the Woznicks, was he not?

A. That is correct.

Q. It is a fact from reviewing your loan file here that you never turned down any formal request to you by Jayco itself in connection with its normal course of doing business as to loans for machines or other related other business expenses. You have never turned down one of those, have you?

MR. BRYANT: Object to the question as again being vague and ambiguous. When it says normal course of buisness, there's no...

loan the Woznicks would be personally liable?

A. No.

Q. Is the quality of the machine -- you do inventory financing. Let me restate this. You do inventory financing here at RepublicBank for various businesses, do you not?

A. Yes.

Q. Or some variation of it?

A. Yes.

Q. Is the quality and competitiveness of the machine an important factor to be considered in such loans?

A. It is a factor to be considered.

Q. If a machine, in fact, is the top machine in a particular product line, would that be an important factor to con-

sider?

A. Yes.

Q. Would it be an important factor to consider if the rquested line of credit dealt with somebody like the State of Texas as a guarantor for the purchaser's side of the machine or the renter's side?

MR. BRYANT: Object to the question as mischaracterizing, the evidence not being based on a proper predicate, and vague and...

ambiguous in the use of the word guarantor.

Q. In looking at a rental line of credit or inventory financing, is the creditworthiness of the renter a factor which you would consider?

A. Yes.

Q. Would the State of Texas generally be considered a good renter by the bank as far as being creditworthy?

A. Yes.

Q. Have you ever had any experience in the past where any of your customers have had significant financial problems because the State of Texas merely was unable to pay?

A. No.

Q. Do you find that the obligations

of the State of Texas are generally good facts upon which you could base a decision in making a decision to enter a rental program?

MR. STOCKWELL: Read that back. I think you misstated that.

Q. Let me restate it. Do you have any reason to believe that in a rental or inventory financing situation with the State of Texas, is there any fact that you are aware of that would indicate to you that the State of Texas would not be...

Q. Let me ask you in connection with Exhibit Number 6, were you relying on the individual creditworthiness of any other person besides Mr. Andreff in rendering the opinion which you have?

A. Not any other person.

Q. Okay. Are you aware at what time Mr. Andreff formally split off from Jayco Systems and formed his own company?

A. No.

Q. This is dated April 16th, 1976. Is it your statement under oath today, sir, that Mr. Andreff was still representing to you at that time, April 16th, or is this a follow-up memorandum?

A. On April 16th, my memorandum that I dictated states that he had started

his own company. And I would make the assumption, of course, that he had left Jayco around that date.

Q. Okay, sir. How much cash -- did you make an opinion at the time how much cash Mr. Andreff would have needed in order to -- just for his own personal purposes to buy out Jayco and continue the business to the satisfaction that you would have granted him a credit line? Did you ever make that decision.

A. No.

Q. If he had fifteen or twenty thousand dollars would that have made a difference?

A. I don't recall.

Q. Would you be speculating at this time to try to say how much cash would have been required or what strength a financial backer would have been required? Would it be total speculation at this point?

MR. BRYANT: Object to the question as being leading, also vague and ambiguous.

A. I wouldn't want to speculate at this point how much cash would have been needed at that point in time.

Q. Okay. Do you have here at the

bank any kind of --

A. That hasn't been entered into evidence.

Q. Do you have anything here at the bank that would relate to procedures you utilize, if there were any, in connection with making inventory financing lines of credit, or is it just your rule of thumb?

A. The credit decisions are left up to the judgment of the officer handling the request. It's very unusual for us to make a loan based on...

in documents you have produced today absent a sufficient guarantor that you would not make the loan to Mr. Andreff or statements to that effect. Is the corollary to that that with a sufficient guarantor, you would have considered the loan?

A. With someone I considered creditworthy, yeah.

Q. All right. In a closely held corporation such as Jayco Systems, had Jayco itself been seeking a loan to finance inventory or whatever, would it have been your normal procedures in 1976 to have corresponded at some time with the president of this closely held company?

A. Yes.

Q. And if the closely held company

wanted to finance a floor plan for rentals or anything else, would that have been a normal part of your procedures to contact the president of that closely held corporation?

A. Or his designated representative.

Q. But you would have at some time contacted him; is that correct?

A. Normally we do. Much of the negotiations are often handled by the financial officer of the company.

EXHIBIT U

IN THE UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF TEXAS

DALLAS DIVISION

JAYCO SYSTEMS, INC., JIM WOZNICK and SHIRLEY WOZNICK Plaintiffs, V. SAVIN BUSINESS MACHINES CORPROATION, Defendant, V. AMERICAN BUSINESS PRODUCTS, INC., Third-Party Defendant	§	CIVIL ACTION NO. 3-78-0060-H

AFFIDAVIT OF JERRY ANDREFF

THE STATE OF TEXAS §
§
COUNTY OF DALLAS §

BEFORE ME, the undersigned authority, on this day personally appeared JERRY

ANDREFF, who, after being first duly sworn, stated under oath as follows:

1. "My name is Jerry Andreff. I am over the age of eighteen (18) years, of sound mind, and competent to make this affidavit in all respects, that the statements contained herein are within my own personal knowledge, and are true and correct.

2. "I worked with Jayco Systems, Inc. from late 1974 through the Spring of 1976. Improper suggestions have been made by Savin in connection with the reason that I left my association with Jayco Systems, Inc.

3. "First, I left Jayco because of Savin's refusal to own up to its support responsibilities for the Savin 300 Series plain paper bond copiers, because it was not fairly allocating sufficient machines to

allow Jayco to generate sufficient revenues for the expansion I desired, and because Savin refused to allow an allocation for Jayco to undertake large institutional accounts, such as the State of Texas.

4. "Had Savin agreed to allocate machines to Jayco in the event Jayco obtained customers such as the State of Texas, I would have stayed with Jayco. In fact, had Jayco even been allowed to bid on the State of Texas business, I would have returned to Jayco in order to assist in the administration and service of the State of Texas copier business.

5. "I had many years of experience dealing with State governments, and particularly with the State of Texas. I serviced the State of Texas copier business for

Saxon Business Products where I first worked under Mr. Art Nendick, later an officer with the Savin Corporation. I knew, by experience, that the State of Texas copier business was a profitable one if a reliable and dependable machine could be bid. I actively and vigorously pursued business with the State of Texas while I was at Jayco, and continued to make evident my interest at my new business, Copy Systems.

6. "In fact, after leaving Jayco in the Spring of 1976, I did submit a bid for the State of Texas copier rental contract for the North Texas zone. In fact, I was the low bid for the particular category, but the State of Texas representatives refused to either award the contract to me, or to discuss with me the reason for their failure

to award the contract to me. Savin, while not low bidder, got the award. I am saying that, in fact, my bid was the low bid on the State's 'cost per copy' formula. Yet, I was never awarded the contract, and the State representatives, such as Mr. Schneider and Mr. Fowler, refused to give me a reason for their decision not to award me the State's business for the contract which I sought for the North Texas zone.

7. "Subsequent to leaving Jayco Systems, Inc. in the Spring of 1976, I became aware that the Savin Corporation did in fact bid for the State of Texas copier rental contracts for which Jayco had desired to bid. When I became employed by the Savin Corporation in Dallas at the Dallas Savin Branch, I became aware of the fact that com-

petition in connection with the State of Texas business was not allowed, that an agreement had been reached between Savin and various Savin dealers which precluded any price competition for the State business.

8. "While at the Dallas Savin Branch, I also became aware that Savin and Uni-Copy in Austin controlled the bidding for Savin products to the State, including pricing, the identification of the installing dealer or branch, and the commission split for those dealers who participated in the Savin arrangement."

Further, affiant sayeth not.

/s/ Jerry Andreff
JERRY ANDREFF

SUBSCRIBED AND SWORN TO BEFORE ME on this the 23rd day of February, 1984.

EXHIBIT U

/s/ Susan L. Keeling
SUSAN L. KEELING, Notary Public
in and for the State of Texas

My commission expires September 19, 1985

EXHIBIT V

IN THE UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF TEXAS

DALLAS DIVISION

JAYCO SYSTEMS, INC., JIM WOZNICK and SHIRLEY WOZNICK	§	
Plaintiffs,	§	
V.	§	CIVIL ACTION NO. 3-78-0060-H
SAVIN BUSINESS MACHINES CORPROATION,	§	
Defendant,	§	
V.	§	
AMERICAN BUSINESS PRODUCTS, INC.,	§	
Third-Party Defendant	§	

- - -

ORAL DEPOSITION

OF

SHELBY D. HUNT

- - -

ANSWERS AND DEPOSITION OF SHELBY D. HUNT, produced as a witness at the instance

of the Defendant, taken in the above styled and numbered cause on the 25th day of February, A.D., 1982, at 2:30 o'clock p.m., before David M. Bingham, a Certified Shorthand Reporter in and for the State of Texas, at the offices of Carrington, Coleman, Sloman & Blumenthal, Suite 2500, South Tower, Plaza of the Americas, in the City of Dallas, County of Dallas, State of Texas, in accordance with the Notice duly issued and the agreement hereinafter set forth.

ORAL DEPOSITION OF SHELBY D. HUNT

than just looking at it. And I would like to meet with the Touche Ross people, or at least discuss it with them on the telephone, to discuss the various theories they used. So I have not had an opportunity to do that.

Q. Based upon just what I understand from what you've said was a rather cursory review of those documents that they have put together, did you reach any conclusions at all about the viability of the theories that they used to try to determine damages under these various categories?

A. Absolutely no conclusions at all.

Q. And I take it that you haven't made any suggestions to them on changing anything, to this point?

A. Not at all. I have not talked with them at all.

Q. The ninth category was relating to the low volume, I think it's structure of -- what is the third word?

A. It's the structure of the industry.

Q. Okay. What have you determined in this area?

A. I have been attempting to get date concerning the convenience copy market, convenience copier...

market, in terms of total industry sales by the various companies in various models, in terms of the market share of Savin nationally and the market share of Savin in the State of Texas, or in the Southwest region or in the Dallas area. At the present time I have not been able to find very much information on this. It seems that the census, the United States Government, at one time did publisn information on, for example, the total sales of the photocopying industry. However the industry is now so concentrated, that is, the total sales of the industry are accounted for by so few firms, that the United States Government now refuses to publish information on sales.

Q. Do you know for a fact that that

is the reason why this publication is no longer made?

A. Yes.

Q. How do you know that?

A. That's what they say, the footnote.

Q. Footnotes to what?

A. In the census -- you have a copy of the document.

Q. Okay.

A. Likewise I asked Mr. Boyd if he would get, by interrogatory or other means, from Savin Corporation, the market share of Savin Corporation throughout...

various years so that I could attempt to examine the structure of the industry. He has lead me to believe that Savin Corporation has not been responsive to those requests.

Q. When you use the term "convenience copy market," was that the term you used?

A. Yes.

Q. -- what does that mean? Is that the under thirty, or what do you mean by that?

A. The convenience copier market, as my understanding, the term normally means copy machines that do less than thirty copies per minute, relatively low volume machines, relatively inexpensive, plain paper copier machines, in contrast to, I think the phrase

is used "the copy duplicator type machines" which are significantly faster and higher volume units, or the duplicator machines which are even higher volume yet. And it's my understanding that the Savin machines belong or compete in the lower volume thirty copies per minute or less market, inexpensive plain paper copy market. So I was particularly interested in data concerning the extent to which Savin has failed in this particular market over the various years, both nationally, State of Texas, in the Dallas area, any data that I could find...

and get. At the present time I'm having difficulty getting that kind of data.

Q. What would this bear upon among the various opinions that you are seeking to reach here?

A. Oh, I do have a -- I forgot to mention one thing that I had --

Q. Okay.

A. The information that I have been able to get so far which primarily comes from the documents we discussed before, depositions and so forth, is that Savin Corporation, starting around 1976 with the introduction of their 700 series, essentially have no real effective competitors. The machine was an outstanding machine. It was very well-received by the marketplace. It

was a very reliable machine and it was a very inexpensive machine. And that competitors' machines could not effectively compete on price, performance, reliability, with the Savin machines. Or if they could, they were going to be much more expensive than the Savin machines. This has to do -- your next question was what does this have to do with the issues and it has to do with the nature of competition in the convenience copier market, it has to do with the extent to which, for example, the State of Texas would have opportunities for not only...

several Savin dealers to compete for the State of Texas business, but other manufacturers of copy machines as well. That is, if the other manufacturers of copy machines had machines that were equivalent to the Savin, and now referring to primarily the 700 series or after the 700 series was introduced, if these other machines would compete effectively with the State of Texas, then this would be very good for the State of Texas in terms of having the opportunity of various competitors competing for their business.

Q. I take it that you are still giving consideration to these various areas and that there is the possibility that your views would be modified in some regard on these various categories?

A. That is correct.

Q. It is my desire to understand fully exactly what opinions you will be rendering in the trial of this case. Have you fully told me now today the various opinions and conclusions you've reached through today's date?

A. Yes, I have.

Q. Okay. Of course, I would prefer if there is any way to do it, to not have to go through a supplementary deposition in the event that you have reached any additional conclusions or whatever, and...

EXHIBIT W

IN THE UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF TEXAS

DALLAS DIVISION

JAYCO SYSTEMS, INC., JIM WOZNICK and SHIRLEY WOZNICK Plaintiffs, V. SAVIN BUSINESS MACHINES CORPROATION, Defendant, V. AMERICAN BUSINESS PRODUCTS, INC., Third-Party Defendant	§	CIVIL ACTION NO. 3-78-0060-H

MEMORANDUM IN SUPPORT OF
PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT

COME NOW JAYCO SYSTEMS, INC., JIM WOZNICK, and SHIRLEY WOZNICK, Plaintiffs herein, and file this their Memorandum in

EXHIBIT W

Support of Plaintiffs' Motion for Summary Judgment and would show as follows:

SUMMARY JUDGMENT EVIDENCE

The Plaintiffs' entitlements to summary judgment as set forth in the accompanying Motion is based upon the following...

necessary for both of the Section 2 violations committed by Savin and its combination in the case at bar.

First, in the attempt offense, Jayco has set forth undisputed facts which establish:

1. Specific intent to accomplish the illegal result; and

2. A dangerous probability that the attempt would be successful.

The facts as discussed above under Savin's unlawful acquisition of the relevant State of Texas submarkets is on point. The relevant submarket is that defined by the State contracts bid for and obtained by Savin/Uni-Copy in cooperation with other Savin Dealers in 1976 and thereafter. The description of those markets is set forth in

the State of Texas contract awards themselves.

In 1975, a year prior to the activation of the Savin combination which bid on the State of Texas business, the contract category from 1 to 50,000 copies was awarded to two different contractors in various zones, rather than the entire State. A view of the 1975 bid award is set forth at P's Ex. No. 21).

In 1976, the Savin Corporation, in combination with other Savin Dealers, bid for and obtained the contract for 2,000 to 50,000 copies per month in the State of Texas. Both Xerox and Saxon were deleted from the 2,000 to 50,000 copies per month rental contract category. (P's Ex. No. 22).

In 1977, the Savin Corporation, in

combination with other Savin Dealers, bid for and obtained the contract categories including 2,000 to 75,000 copies per month. (P's Ex. No. 23).

In 1978, the Savin Corporation, in combination with other Savin Dealers, bid for and obtained the bond copier rental contracts for 1 to 75,000 copies per month. (P's Ex. No. 24).

In 1979, the Savin Corporation, in combination with other Savin Dealers, bid for and obtained the bond copier rental contract categories of 1 to 75,000 copiers per month. (P's Ex. No. 25).

In 1980, the Savin Corporation, in combination with other Savin Dealers, bid for and obtained the bond copier rental contract categories of 1 to 75,000 copiers per month.

(P's Ex. No. 26).

In 1981, the Savin Corporation, in combination with Savin Dealers, bid for and obtained the bond copier rental contracts of 1 to 75,000 copies per month. (P's Ex. No. 27).

In 1982, bid procedures were modified, and bids were returned to vendors for resubmission by early 1983. The results of those bids and awards will be made available to the Court when available. Nonetheless, the facts speak for themselves. Savin/Uni-Copy has virtually been awarded every single bid it has submitted for bond copier rental contracts since 1976. It has achieved control over the use of bond copier rental machines in volume categories of 1 to 75,000 copies per month by virtue of the com-

bination with the Savin Dealers in this State and various State officials. (Wilson Aff.; P's Ex. No. 28).

Savin has not developed sufficient outlets in its own business locations to service machines throughout the State. Thus, Savin has not had its own capability of installing machines throughout the State without the cooperation of other Savin Dealers. There has yet to be any indication of a change in Savin's policy of independent Dealers not "rocking the boat," and continuing to share profits as determined by the Savin Corporation.

There was not only an intent to monopolize this specific market on the part of the Savin Corporation, but actual accomplishment of that result.

Control over these markets has not been obtained through the conventional competitive process. Rather, it has been achieved by insuring that no competition takes place between the various Savin Dealers which completely managed and fulfilled the State of Texas contract through at least 1981. (Wilson Aff.; P's Ex. No. 29).

The relevant submarkets constituted by these State of Texas annual rental contracts are defined in the contracts themselves. Moreover, because of pricing advantages, reliability and dependability advantages, the willingness of Savin Dealers to cooperate by not competing and agreeing to allow Savin to set prices, and political ties with Trent Fowler and Robert Schneider, Savin has not only attempted to control the photo-

copier business, including open-market purchases and toner and dispersant sales, but has actually accomplished that goal.

In addition to the State of Texas bond copier rental contracts, Savin photocopiers were sold in substantial numbers from 1976 through the present date. Uni-Copy of Austin, by agreement of Savin and the other Savin Dealers, submitted all bids for Savin equipment from 1976 through 1980. In 1980, the Savin Corporation established a small corporate presence in Austin and began also submitting open-market purchase bids, with the pricing and bidding approval of Mr. Jim Lawson of Uni-Copy and Mr. Trent Fowler, a State of Texas official, who has supported, assisted and participated in the efforts of the Savin combination to retain control over

State of Texas bond copier accounts. The power to continue to control the indicated State of Texas copier business is made evident by the fact that the State of Texas has often had to pay more to purchase Savin plain paper bond copiers than normal retail customers. In Texas environments where competition occurred between Savin marketing outlets, much lower prices were available to the end user. In connection with the State of Texas business, prices would have been lower to the State of Texas had the Savin Dealers not conspired with one another.

The acquisition and maintenance of control over the relevant submarket of State of Texas bond copier contracts has been achieved through refusals to deal with Jayco, coercion from Savin management exhibited

toward Savin Dealers who dared to compet with it, termination of non-complying independent Savin Dealers, agreements not to compete with one another, agreements regarding the territorial division of the State, and agreements regarding prices at which goods and machines and supplies would be sold, rented, leased or delivered to State agencies, as well as by and through the willing assistance of Mr. Trent Fowler and Mr. Schneider, who established clandestine relations with the Savin combination and offered it contractual advantages not otherwise provided competitors. (Wilson Aff.; P's Ex. No. 29).

Mr. Fowler met secretly with Mr. Art Nendick of the Savin Corporation the night before the very first Savin bid was submitted

for the State of Texas bond copier rental contracts. Two eye witnesses have identified Mr. Fowler's secret meetings with Mr. Nendick the evening before. (Henriksen at 19-21; Mayes at 36-39). Mr. Nendick related that he had to give Mr. Fowler guarantees from Savin before giving it would get Texas' business; as Savin's "sealed bid" was not low. (Henriksen at 21).

Mr. Fowler, like Mr. Schneider, has been repeatedly entertained by Savin representatives in Austin, as well in New York and other locations. See P's Ex. No. 16. Mr. Schneider was recently terminated from his employment with the State due to his involvement in the manufacture of narcotics for distribution in the Austin area.

Both Mr. Fowler and Mr. Schneider

have offered pricing and contracting assistance to the Savin combination which was not offered to their competitors. Such assistance included not only discussing the prices at which bids should be submitted, but also giving advance notice to the representatives of the Savin Corporation of machine requests and renewal notices. (Wilson Aff.; P's Ex. No. 29). Advance notice of renewal notices would thus enable Savin to line up demonstrations with the particular agency before the bid was submitted by the State of Texas Purchasing Commission to competitors in general. Even competitor's bids were specifically discussed. P's Ex. No. 14; for example, the expense account of John Denton, one of Savin's State of Texas managerial employees, reflects a 1978 luncheon between

BEST AVAILABLE COPY

EXHIBIT W

Fowler, Schneider, Denton, and Lawson of Uni-Copy where the subject reflected on the expense voucher was "Discussed Xerox bid and get numbers."

Mr. Fowler further monitored open-market purchase requests in order that he could insure that Savin obtain most, if not all, of said bids. During this "monitoring" of the open-market purchase requests, the Savin combination submitted bids for and obtained virtually every bid award which it sought. Hundreds of the Savin 700 Series plain paper bond copiers have been sold to the State agency under the tutorage of Mr. Trent Fowler and the cooperation assistance of Mr. Jim Lawson of Uni-Copy on behalf of tne Savin combination. (Wilson Affd.; P's Ex. No. 29).

As the arrangement between Savin, Uni-Copy and the other Savin Dealers on open-market bid awards provided various profit sharing plans over the years, such profit sharing was structured in a manner that would convince participating Savin Dealers not to compete with the combination. (Henriksen at 31-32)(Dealers were paid more than they were due).

Initially, retail profits were split according to the agreement of the Savin combination in the following manner:

1. 4% to the Savin Corporation;
2. 48% to Uni-Copy of Austin; and
3. 48% to the installing dealer.

The installing dealer in the Austin and Houston area was Uni-Copy. The installing

dealer in the other areas of the State were those dealers selected by Mr. Lawson of Uni-Copy. Savin Dealers who were unwilling to "cooperate" were not allowed to share in this profit split which generated substantial sums of money. Generally speaking, about $2,000.00 was available for division among the parties on the sale of each machine.

Subsequent to the establishment of a Savin Corporate presence in Austin in 1980, the Savin representative was in charge of notifying the installing dealer. The approximately $1,000.00 payment to the Dealer was far in excess of what would otherwise be necessary in a competitive situation. The prices bid on the open-market bids were higher than would have been submitted in a competitive circumstance. In fact, purcha-

sers "on the streets of Dallas" could purchase the same machines for much less because of the more competitive pricing situation, particularly when Jayco was a Savin Dealer. (Wilson Aff.; P's Ex. No. 29).

The Savin Corporation has acquired virtually 100% of the business it sought in the relevant Texas submarkets. It not only attempted to do so, or had a dangerous probability of doing so, but accomplished its goal of obtaining control over the State of Texas business. The acquisition of the State of Texas business was a true plume in the Savin hat. It is, and has been, the major account of the Savin Corporation for many years. It was utilized nationwide in attempts to generate marketing interests for the Savin

bond copiers.

In obtaining control of these sub-markets, Savin played with "no holds barred." That reckless conduct also contravened Section 2 of the Sherman Act. Jayco, which was restrained from competing for this business, is entitled to recover its damages in the form of lost past and future profits in an amount of not less than $9,510,824.00 in connection with the State of Texas business. (Loconto Aff.; P's Ex. No. 30).

Jayco is further entitled to recover its lost past and future profits from damages in the Territory in an amount of not less than $6,761,925.00. (Locanto Aff.; P's Ex. No. 30).

EXHIBIT X

IN THE
UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 84-1677

JAYCO SYSTEMS, INC.,

Plaintiff-Appellant

versus

SAVIN BUSINESS MACHINES
CORPORATION,

Defendant-Appellee

Appeal from the United States District Court
for the Northern District of Texas

BRIEF OF APPELLANT

Samuel L. Boyd
Richard A. Valdes

BOYD & DuBOSE
3500 InterFirst One
Dallas, Texas 75202
(214) 922-0099

ATTORNEYS FOR APPELLANT

EXHIBIT X

The State of Texas copier contracts similarly constitute a relevant sub-market for antitrust analysis. Sealed competitive bids were annually submitted to central purchasing for all of the State of Texas agencies. The lowest "cost per copy" for each copier volume category was entitled to the bid award.

Furthermore, the successful bidder generally had an exclusive right for the entire year. The Savin combination which dominated this market, placed approximately 2,000 copiers with State agencies under rental contracts, alone, by the year 1979. Ms. Mary Wilson testified in her affidavit that Savin also controlled about 95% of the open-market copier purchases by the State of Texas. (Wilson Aff.; Rec. at 1423).

Savin controlled the following

annual rental contracts with the State of Texas:

1976 -- 2,000-50,000 copies per month
1977 -- 2,000-75,000 copies per month
1978 -- 1-75,000 copies per month
1979 -- 1-75,000 copies per month
1980 -- 1-75,000 copies per month
1981 -- 1-75,000 copies per month

(Plaintiff's Appendix to Supplementary Brief, Record "PP", Exhibits Nos. 22-27).

The record makes evident that the Savin combination willfully established and maintained a monopoly of the State of Texas copier business. Because of this monopoly, Ms. Wilson was successfully bidding Savin photocopiers to the State of Texas at a price as much as twice the competitive price for

the same machines in the general retail marketplace. (Wilson Aff.; Rec. at 1419).

EXHIBIT Y

IN THE UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF TEXAS

DALLAS DIVISION

JAYCO SYSTEMS, INC., JIM WOZNICK and SHIRLEY WOZNICK Plaintiffs, V. SAVIN BUSINESS MACHINES CORPROATION, Defendant, V. AMERICAN BUSINESS PRODUCTS, INC., Third-Party Defendant	§	CIVIL ACTION NO. 3-78-0060-H

DATE: July 13, 1982

REPORTER: RANDALL N. FINCH, C.S.R.

ORAL DEPOSITION

OF

JAMES PAUL LAWSON

ORAL DEPOSITION OF JAMES PAUL LAWSON

Uni-Copy. There are five different zones within the state.

Q. Okay. Well, explain to me how the bid process works. You're explaining the zone situation.

A. Okay. You have five different zones. You may bid equipment or you may bid supplies for anyone or all five of the zones at any time that a contract is bid. And you can sit and bid Uni-Copy Austin for zone one, which is Austin. And it covers, I believe, San Antonio and the valley.

Q. Okay.

A. In that particular zone. You can bid Uni-Copy Houston for zone five, which would be Houston, I believe -- well, hell, I'm not sure what the zones are now, but there's maps over at the Purchasing

Commission that give all the various five zones.

Q. Okay. So how did that affect the rest of the state?

A. In what way?

Q. Well, I understood you to say that you bid the whole state, you understood, at one time, either '77 or '78?

A. Yes, by the zones, as I say, and bid for Uni-Copy Houston.

Q. What about Dallas, for instance? You had --

A. Dallas was Quisenberry.

Q. Okay. Well, who bid it?

A. I think I bid it.

Q. Okay. Okay. Did you have his approval to do that?

A. Of course.

Q. Okay. Is it the same with the other zones that your own business didn't take care of? I mean did you get the approval of the proprietors in those locations to bid the zones?

MR. BRYANT: Object to the vague and ambiguous question.

THE WITNESS: If I bid for Houston, of course, I talked to the people from Houston first, naturally.

QUESTIONS BY MR. BOYD:

Q. All right. Is there anybody that you placed a bid for for the State of Texas in either '77 or '78 that you did not previously obtain approval from?

A. For the supplies?

Q. Yes, sir.

A. Not that I know of.

Q. Okay. Now, then, in connection with those bids --

MR. ALEXANDER: Excuse me a minute.

MR. BOYD: Let me ask one more question if I can. In connection with those bids, how did --

MR. BRYANT: Well, let him confer with this counsel --

MR. BOYD: Well, just a second, just a second, before we even have a conference, just a second. We are supposed -- we are now -- please note on the record we're having a little conference

between counsel and his client. But this is supposed to be taken just as if the testimony was being given in court. And counsel, if the testimony was being given in court, would not be allowed to approach the witness stand and confer with his witness.

MR. BRYANT: I'm unaware of any deposition that has been taken in this case where you had a client where you weren't whispering in your client's ear on virtually each and every question --

MR. BOYD: Now, Mr. Bryant --

MR. BRYANT: -- and I think it's a little out of line for you not to allow him to consult with his attorney.

MR. BOYD: That was pure affection. That was pure affection. No words at all, just straight affection.

THE WITNESS: Well, I'm beginning to worry about you.

QUESTIONS BY MR. BOYD:

Q. All right. Now, then, in connection with submitting Mr. Quisenberry's bid or whoever else that you might have submitted, how did you determine the price? Did

you get approval from them on the price before you submitted it?

A. No.

Q. You didn't or did? Did you submit --

A. Off the record.

Q. Well, just a second, before we talk off the record now, hold it, hold it. If you're -- if you don't understand the question, I want you to ask me to rephrase it. If your counsel has an objection, I want him to pose the question. And now let's call the judge before we even have a conference with our client, if every time...

we've got a question, we've got to have a conference with our client.

THE WITNESS: Well, I think we are still going back to the same question you was asking before or something.

MR. BOYD: Yes. That's right. You've already answered the question. I'm just asking you specifically -- and, Mr. Alexander, if you have an objection to my question, you may state it on the record.

MR. BRYANT: He is entitled to confer with his client.

MR. BOYD: He is not entitled under the rules -- This is

a very important question, and you know this is important, Mr. Alexander, and I'm making a point of it so the judge over there understands what's going on. This is the crux of the whole case.

MR. ALEXANDER: Well, I think all your questions are important, Mr. Boyd, but I'm going to object to this last one as being vague and misleading.

MR. BOYD: Good. All right.

MR. ALEXANDER: I'm going to instruct him not to answer until I can confer...

with him about potential meanings of that question.

QUESTIONS BY MR. BOYD:

Q. All right. I'm going to ask the question one more time, and this will be on the record, which can be read into Court.

Did you -- and you tell -- you instruct him so we have the record clear. Did you, in seeking or getting the approval to submit the bid for Quisenberry's area from Quisenberry, did you also determine at what price he wanted to submit the bid in any way?

MR. BOYD: You instruct him and it's going to be read to the jury.

MR. BRYANT: What year is this?

EXHIBIT Y

MR. BOYD: 1977 and 1978.

QUESTIONS BY MR. BOYD:

Q. In obtaining the approval to submit the bid for Mr. Quisenberry for his area of the state, did you or did you not get approval for the price from Mr. Quisenberry to be submitted?

MR. BRYANT: Have we determined that, in fact, there was a bid submitted in '77 or '78?

MR. BOYD: I hope you listen. I hope you listen.

MR. BRYANT: I am, too.

MR. ALEXANDER: I'm going to object to the question. I'm unclear as to the meaning which is--

MR. BOYD: In what way?

MR. ALEXANDER: Well, in terms of the submitting a bid for Mr. Quisenberry's area.

MR. BOYD: Okay.

MR. ALEXANDER: First of all --

MR. BOYD: Let me rephrase it. Let me rephrase it, Richard, because I know you understand where we are.

MR. ALEXANDER: Well, I resent your insinuations that I

understand anything. I understand that this question is misleading --

THE WITNESS: First off, I think what you're trying to do is get to where, did I try and rig bids or price-fix.

MR. BOYD: No, I'm not asking you if you rigged -- I'm asking you, did you not say a moment ago, sir -- did you not say a moment ago that you obtained approval from Mr. Quisenberry to submit a bid for his area? Did you not say that?

MR. ALEXANDER: Okay, I don't think

he said that, but --

QUESTIONS BY MR. BOYD:

Q. Did you say that? The record will be what it is.

A. I said, number one, that prior to ever -- whether it be a bid or a machine going in or supplies or anything else, I let the people know what is going on within that area that they're going to be receiving the machine or supplies will be coming in.

Q. Okay. Now then, I want to go back specifically to my question a moment ago, and this court reporter has got a tape recorder and he also took it down, so we're going to know the exact words that were spoken. And what I'm asking you is this: I asked you a moment ago how you bid the entire

state, and did you not say that in connection with bidding the entire state, you bid toner dispersant for particular zones for particular dealers? Did you not say that?

A. No for dealers, no, I did not.

Q. Who did you bid it for?

A. I said I might have bid for Houston.

Q. Okay.

all. It's that simple.

Q. Why did you need Quis' approval?

A. Because if the man is going to service the area, he's got to know that something is coming in there, doesn't he?

Q. I understood you to say -- and correct me if I'm wrong -- that you submitted a bid for his company for that area.

A. I submitted the whole bid, yes.

Q. Okay. Now then -- and I understood you to say that you got his approval before you submitted a bid.

A. Yes, I said he would service it.

Q. Okay. And are you telling me that you had the right to select the price at which his bid went in?

A. I would think so.

Q. Okay.

MR. ALEXANDER: I object to that question. I object to the phrasing and I object to the response.

MR. BOYD: Okay.

THE WITNESS: Now, Rick and I are going to sit and talk, now that you've got your question --

MR. BOYD: Y'all may go ahead and chat a little bit, if you want to take a break or whatever.

(At this time there was a brief recess taken, after which the deposition continued as follows:)

QUESTIONS BY MR. BOYD:

Q. Counsel and his client have had a chance to confer during the break and we're now back on the record.

Mr. Lawson, I understood you to describe somewhat the break, if you will, on the rental commissions that were earned under the State of Texas contract for the rental of Savin equipment. But I understood you to tell me that $50, approximately, as best you

remember, went to the dealer, which left -- and $40. for installation or thereabouts went to the dealer, which left $70 per month to go to Savin, with whatever they wanted to do with it. I understood you to earlier say in this deposition something about the fact that you coordinated the state business?

A. That's correct.

Q. Okay. Now, I want to make sure I...

understand, then, for a machine that was installed under the State of Texas bond copier rental contract, in 1977, in the City of Dallas, by either Mr. Quisenberry's company or the Savin branch, Uni-Copy made no money on that installation or on the contract itself?

A. Now, Uni-Copy received a coordinating fee.

Q. Okay. What was the coordinating fee?

A. Oh, Lord.

Q. About five dollars a machine?

A. I'm trying to remember if it was four or five. I think it was five a machine. About -- yes, it was five.

Q. Okay. Do you recall approxima-

tely how long that arrangement lasted where Uni-Copy of Austin received a $5 per machine coordinating fee?

A. I believe it was until 1979.

Q. Could it have been --

A. It may have been '80. It may have been '80. I'm trying to remember. '79 or '80, one of the two.

Q. Could it have been early 1980 when the Savin corporate put an office in down here...

to run the state contract?

A. Well, they opened an office in Dallas before that.

Q. Okay.

A. Six or eight months. I don't remember if that -- if that's what caused it or if it was when they opened the office here, I'm not sure. It was one of the two.

Q. Okay. All right. Did you ever -- we've talked about these dealers and their relationships to Uni-Copy and Savin for the placement of machines, how much they got off the contract as you understood it, and the bid submission on toner dispersant and ways that you've handled that. In subsequent years or prior that, prior to 1977, '78, did you submit any bids for Savin?

A. Prior to '77?

Q. Or thereafter. At any time.

A. Well, sure.

Q. Okay. What kind of bids would you submit for Savin?

A. Open market for machine purchase or even if it was a non-contract rental, a reduction type copier or something like that.

If it was a reduction type copier, then it was on a rental, wasn't on a contract, just an open market rental purchase or rental agreement.

Q. Okay. That's for the corporate -- corporation you submitted bids?

A. Uh-huh.

Q. Okay. How did you determine at what price the bids would be sumbitted?

A. I tried to use GSA pricing that was available, and I would once again study competition, do my best. I used to attend every bid opening, log in who bid what, what they bid and what was going on in the market place.

Q. Is rentals the only thing that you ever bid for Savin?

A. I bid purchases also.

Q. Okay. All right. Well, you say you bid purchases. Would you describe for the court and the jury what purchases are?

A. Purchase of a copy machine.

Q. Okay. We've been talking at some length over what bond copier rental contracts are and how they operate.

A. Uh-huh.

Q. Okay. Now we're talking about

purchasing, so would you please state for the jury the way in '77 and thereafter, when you came aboard, purchasing was handled in those cases in which you bid for Savin? What would you do, on other words?

A. Well, I would go out, number one, to try to sell a piece of equipment to an agency, for example, whether it be local or if they were going to -- once again, TDHR put in machines in Houston or someplace else, take their interest in the equipment. They would then put a requisition in for invitation to purchase and invitation to bid, submit a sealed competitive bid.

Q. Who would submit the sealed competitive bid?

A. I would.

EXHIBIT Y

Q. Okay. And what made you decide to submit the bid for the Savin Corporation?

A. Well, it was my job.

Q. Did you ever submit bids for Uni-Copy on those --

A. Of course.

Q. -- purchases?

A. Sure.

Q. Did you sometimes submit bids for both Savin and for Uni-Copy on the same equipment?

A. On the same equipment?

Q. Yes, sir.

Q. Let's say we have a requisition or a purchase order for four on the open market.

A. No, I would not submit a bid for Svin and Uni-Copy at the same time, no.

Q. Okay. Okay. How did you determine whether to submit a bid on an open market purchase, for Savin, the corporation, or to submit one on behalf of Uni-Copy, for Savin equipment?

A. Normally when I would write, we got our bid in, it stated Uni-Copy -- the bid

came to Uni-Copy. I would write Savin C & D on it.

Q. Okay. Now, when you made the bid on behalf of Uni-Copy and not on behalf of the Savin Corporation?

A. I still wrote in the Savin C & D.

Q. Oh, you did?

A. Yes, sir.

Q. Was it the same profit split either way?

A. Oh, if the machine went here into Austin, of course, all the profits that were due to Savin or due to Uni-Copy went to Uni-Copy. If it was a machine that went out of the city of Austin into another area, then Savin paid us our commission on part of it and the installing dealer the other part.

Q. Okay.

A. The same as Saxon did.

Q. Okay. Well, what I'm trying to get straight -- and I'm not clear, I apologize -- is that sometimes you submit the bid in the name of Savin Corporation, sometime you submit the bid in the name of Uni-Copy.

A. The bids always came in to Uni-Copy initially, because Savin's name was not on there. They had the -- the Uni-Copy

name on it. I would write in Savin C & D on it and submit the bid, whether it be for Austin or for out of town. The bid would come back sometimes saying Uni-Copy care of Savin C & D, Savin C & D care of Uni-Copy. How the person and the commissions -- sometimes they kept them straight, sometimes they didn't.

Q. Okay.

A. Now, when the machine went out of the City of Austin, out of our particular delaer territory, the installing dealer received his commission and we received part of the commission also for doing the coordinating, for doing the bidding, for doing the work.

Q. Okay.

A. And we probably worked up, I would say, 70 to 80 percent of the machine orders out of there, being in the capitol and working with the various department heads.

Q. Okay. In talking about the percent of orders for Savin equipment, what percent do you think you obtained the bids when Savin equipment was sold?

A. I have no idea.

Q. Anything less than 98 percent?

MR. BRYANT: I didn't understand the last question. What was less than --

QUESTIONS BY MR. BOYD:

Q. I mean did you virtually -- every time Savin equipment was selected for an open market purchase, did you virtually every time get the bid?

A. I tried to get the bid. You're darn...

BEST AVAILABLE COPY

BEST AVAILABLE COPY

right, that was my job.

Q. All right. Are you aware of any other bids that beat you out where Savin equipment was selected on the open market?

A. Yes.

MR. BRYANT: What is the time frame on this?

MR. BOYD: 1977 and thereafter.

QUESTIONS BY MR. BOYD:

Q. Was it often that you were beat out?

A. Hopefully not often.

MR. BRYANT: Just a minute. Just a minute. I want to make sure I understand what the question is. Is this question --

did I understand you to say this last question is 1977 and anytime thereafter?

MR. BOYD: And thereafter.

MR. BRYANT: Okay.

THE WITNESS: Once again, hopefully not often, but yes, there were some that we lost.

QUESTIONS BY MR. BOYD:

Q. Do you have any records on the ones you lost?

A. I wouldn't have any record of it. Why would I?

Q. No, I just wondered if you kept any kind of record on competitors that --

A. I used to keep a total running log at all times of all bids. But since I haven't done that much bidding for them in the last three years, two and a half years, I see no....

Q. Okay. Now, if an agency in Dallas wanted to purchase four machines, four bond copiers on the open market, and Savin equipment qualified for the specs -- let's presume that first. Trying to understand your procedures. And the state would contact you and other vendors and request bids, sealed bids for that, is that generally what happened?

A. They would mail out invitations

to bid.

Q. All right. Now then, and I understand you to be saying that in those situations, if four machines went into Dallas, somewhere in Dallas, open market requisitions, that the profit -- now, how do you figure that the profit would be disposed of by half to the installing dealer and half to Uni-Copy? How was the profit itself figured? What are you talking about? Would you please define it?

MR. BRYANT: Wait a minute. I don't understand the question. The question started out what if the state wanted to bid on four machines in Dallas, and the question winds up being as how did you determine a profit --

MR. BOYD: Yeah, it's late in the day. Let me restate the question so Mr. Bryant understands it.

QUESTIONS BY MR. BOYD:

Q. In the event four machines were being solicited for open market purchase, for an agency in Dallas, in that event, I understood you to say if the bid wa successful down here in Austin for some Savin equip-

ment, that you would split the profit with the installing dealer in Dallas, whoever it happened to be. Yes or no.?

MR. BRYANT: I object.

MR. ALEXANDER: Let me object to that. What are we calling profit?

MR. BOYD: That's what I'm going to ask him. I heard him say that a minute ago, half the profit goes to the installing dealer and half to Uni-Copy if it was in another part of the state other than Austin.

MR. ALEXANDER: I understood him to say that --

MR. BOYD: Well, let me rephrase it, and then we won't have any problem.

QUESTIONS BY MR. BOYD:

Q. Do you recall a few moments ago describing to me what happened on an open market sale, if the sale was here in Austin?

A. Yes.

Q. Do you recall making the statement?

A. Yes, sir.

Q. Okay. Now, what do you recall saying, so we are all clear at this time?

A. If the machine was sold here in Austin --

Q. Okay.

A. -- that the normal profit that would go to the dealer would come to Uni-Copy.

Q. Okay. Now then, how was that profit -- the normal profit, what do you use to determine that?

A. I don't determine it. Savin determines it.

Q. Okay. Do you know what figures were utilized in order to determine what the normal...

profit was, for the split?

A. I would think it was the cost of the equipment versus what it sold for. Same as anything else. If you have a $10 item and you sell it for $14, you've got a four dollar gross profit.

Q. Okay. Remember, not only the lawyers are a little unfamiliar with this process, which is very complicated, but also the members of the jury. That's the reason why I'm asking you to be very basic in your explanation.

A. I think you stated also half of it, and I don't recall saying half of it, because that was not necessarily true.

Q. Okay. Okay. Let's go back to '77 and '78, that time frame so we're absolu-

tely certain. I've just understood what you said happened if the sale was in Austin on the open market for Savin equipment here in Austin.

Now, in determining what the profit was, I understand you look at the cost and you look at the sale price. Do you mean by the sale price you look at the bid price that's reflected on the bid submitted?

A. That's correct.

Q. You have to answer for the court reporter.

A. Yes, sir.

Q. And the cost. Who determines what the cost is?

A. Savin corporate, their selling price to the dealer.

Q. Okay. There are different volume prices in numbers of units. In other words, if a dealer purchased one or purchased 50, there's a different price. There has been in the past.

A. There used to be. I don't know when that -- that went out sometime ago, I don't remember when.

Q. Okay. In '77 and '78 it existed, did it not? Volume discounts? Or

do you remember?

A. I don't know that it did in '78. I think it did in '77. Once again, I'm not --

Q. Okay.

A. Calling on -- on --

Q. I appreciate your trying to remember.

A. I'm not sure.

Q. Okay. At one time, then, the cost was a function of how many you purchased, and at...

meeting.

Q. Do you have --

A. Mary Wilson I think was there.

Q. Okay. Do you know if Mr. Fowler has participated in training sessions since 1977 for any other photocopier vendor?

A. I have no idea. I believe that -- it wasn't Fowler, I think that was Schneider that made a trip with Mary Wilson to Chicago for A.B. Dick. In fact, I think they go snowed in up there together.

Q. In order to influence State of Texas officials Mr. Lawson, have you developed personal relationships with any of the purchasing people?

A. Yes, I've become friends. I don't call it personal relationships. I've

become friends with everybody -- and, you know, if you're going to spend six or seven years working with people, whether it be state, federal, commercial or whatever it is, if you can't develop a rapport and develop some type of friendship, then you're a damn poor sales person and ought not be out there.

Q. Did you develop any particular..